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Report of the Working Group on International Contract Practices on the work of its twenty-third session (Vienna, 11 – 22 December 2000)

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I. Introduction

1. At the present session, the Working Group on International Contract Practices continued its work on the preparation of a draft convention on assignment of receivables in international trade pursuant to a decision taken by the Commission at its thirty-third session held in New York from 12 June to 7 July 2000.[1]

2. At its previous session, which was held in Vienna from 11 to 22 October 1999, the Working Group had completed its work and submitted the draft convention to the Commission (A/CN.9/466, para. 19). However, due to the lack of sufficient time, the Commission considered and adopted only draft articles 1 to 17 of the draft convention with the exception of the bracketed language in those provisions [2] and referred the draft convention back to the Working Group entrusting the Working Group with the task of reviewing draft articles 18 to 44 of the draft convention and draft articles 1 to 7 of the annex to the draft convention, as well as text that remained in square brackets in draft articles 1 to 17 of the draft convention; ensuring the coherence and consistency in the text of the draft convention as a whole in the light of the modifications made by the Commission to draft articles 1 to 17 of the draft convention; bringing to the attention of the Commission any new policy issues that may be identified by the Working Group in draft articles 1 to 17, as well as making recommendations for the resolution of those issues by the Commission; and making only those changes in the draft convention that would meet with substantial support.[3]

3. The Commission requested the Working Group to proceed with its work expeditiously so as to finalise the draft convention and submit it for final adoption by the Commission at its thirty-fourth session in 2001.[4] The Commission also requested the Secretariat to prepare and distribute a revised version of the commentary on the draft convention after the Working Group had completed its work. Furthermore, the Commission requested the Secretariat to distribute for comments the text of the draft convention after the completion of the work of the Working Group to all States and international organizations, including

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1 Official Records of the General Assembly, Fifty-fifth Session, Supplement No. 17 (A/55/17), paras. 186-192.

2 Ibid., para. 180.

3 Ibid., para. 187.

4 Ibid., para. 188.

non-governmental organizations that were normally invited to attend meetings of the Commission and its working groups as observers, and to prepare and distribute an analytical compilation of those comments.[5]

4. The Working Group, which was composed of all States members of the Commission, held the present session at Vienna from 11 to 22 December 2000. The session was attended by representatives of the following States members of the Working Group: Argentina, Australia, Austria, Cameroon, China, Colombia, Egypt, France, Germany, Honduras, Hungary, Iran (Islamic Republic of), Italy, Japan, Kenya, Mexico, Nigeria, Romania, Russian Federation, Spain, Sudan, Thailand, United Kingdom of Great Britain and Northern Ireland and United States of America.

5. The session was attended by observers from the following States: Bolivia, Canada, Czech Republic, Ecuador, Indonesia, Iraq, Lebanon, Malaysia, Peru, Republic of Korea, Saudi Arabia, Slovakia, Sweden, Switzerland and Turkey.

6. The session was attended by observers from the following international organizations: Asian-African Legal Consultative Committee (AALCC), Common Market for Eastern and Southern Africa (COMESA), Association of the Bar of the City of New York (ABCNY), Commercial Finance Association (CFA), European Federation of National Factoring Associations (EUROPAFACTORING), European Central Bank (ECB), Factors Chain International (FCI), Fédération bancaire de l'Union européenne and Federacion Latinoamericana de Bancos (FELABAN).

7. The Working Group elected the following officers:

Chairman: Mr. David Morán Bovio (Spain)

Rapporteur: Mr. Hossein Ghazizadeh (Islamic Republic of Iran).

8. The Working Group had before it the following documents: the provisional agenda (A/CN.9/WG.V/WP.51), the draft convention on assignment of receivables in international trade, as adopted by the Working Group in October 1999 (A/CN.9/466, Annex I); draft articles 1 to 17 of the draft convention, as adopted by the Commission in July 2000 (A/55/17, Annex I); and an analytical commentary on the draft convention prepared by the Secretariat (A/CN.9/470). The Working Group also had before it comments on the draft convention made by Governments and international organizations (A/CN.9/472 and Addenda 1 to 5).

9. The Working Group adopted the following agenda:

1. Election of officers.
2. Adoption of the agenda.
3. Preparation of draft convention on assignment of receivables in international trade.
4. Other business.
5. Adoption of the report.

[5] Ibid., para. 191.

II. Deliberations and decisions

10. The Working Group considered draft articles 1, paragraph 4, 4, paragraph 4 and 18 to 44 of the draft convention, as well as draft articles 1 to 7 of the annex.

11. The deliberations and conclusions of the Working Group are set forth below in chapters III to V. With the exception of draft articles 4, paragraph 4 and 39 that were retained in square brackets and referred to the Commission, the Working Group adopted draft articles 1, paragraph 4, 18 to 38 and 40 to 44 of the draft convention, as well as draft articles 1 to 7 of the annex. Having completed its work, the Working Group decided to submit the draft convention to the Commission for adoption at its thirty-fourth session, to be held in Vienna from 25 June to 13 July 2001.

III. Draft convention on assignment of receivables in international trade

...

Section II
Debtor

...

Article 18
Notification of the debtor

12. Draft article 18 as considered by the Working Group was as follows:

> "1. A notification of the assignment and a payment instruction are effective when received by the debtor, if they are in a language that is reasonably expected to inform the debtor about their contents. It shall be sufficient if a notification of the assignment or a payment instruction is in the language of the original contract.
>
> "2. A notification of the assignment or a payment instruction may relate to receivables arising after notification.
>
> "3. Notification of a subsequent assignment constitutes notification of any prior assignment."

Paragraph 1

13. In response to a question as to the relationship between a notification and a payment instruction, it was noted that, as a result of draft articles 5, subparagraph (d), 15 and 18, to be effective, a notification did not need to contain a payment instruction, but a payment instruction could only be given in a notification or subsequent to a notification by the assignee (see also para. 24).

Paragraph 3

14. A number of concerns were expressed with respect to paragraph 3. One concern was that, if not all assignments in a chain of assignments were notified to the debtor, it would be very difficult for the debtor to determine which was the last of such subsequent assignments in order to obtain a valid discharge under draft article 19, paragraph 4. Another concern was that in the case of a combination of duplicate assignments with subsequent assignments, it would be even more difficult for the debtor to determine

whether to pay in accordance with the first notification received before payment (draft article 19, paragraph 2) or in accordance with the notification of the last subsequent assignment (draft article 19, paragraph 4).

15. In order to address those concerns, a number of proposals were made. One proposal was that paragraph 3 should be revised to read as follows:

> "Notification of a subsequent assignment constitutes notification of any prior assignment, to the extent that the notification contains reasonable identification of any assignor of such prior assignment."

16. That proposal was objected to on the ground that it would inadvertently result in unnecessarily complicating notification of subsequent assignments by introducing an additional requirement for such notification to be effective and by referring to vague terms, such as "reasonable identification of any prior assignor" (for the discussion of a related proposal with respect to draft article 19, paragraph 5, see paras. 25-29). It was also observed that draft article 19, paragraphs 2 and 4 sufficiently addressed situations in which notifications of duplicate assignments were combined with notifications of subsequent assignments. Another proposal was that paragraph 3 should be revised to refer only to one prior assignment. In support of that proposal, it was stated that such an approach would be sufficient to address situations involving international factoring arrangements which were the main focus of paragraph 3. There was no sufficient support for that proposal.

17. Yet another concern was that, in its current formulation, paragraph 3 failed to make it sufficiently clear that the assignor of a prior assignment could give notification with respect to a subsequent assignment to which that assignor was not a party. It was stated that that situation was normal practice in international factoring transactions, in which the exporter (assignor) would give, with the invoice, direct notification to the importer (debtor) of the subsequent assignment from the factor in the exporter's country (first assignee) to the factor in the importer's country (second assignee). In order to address that concern, the proposal was made that at the end of paragraph 3 wording along the following lines should be added: "even if the notification of the subsequent assignment is given by the assignor under the prior assignment". The Working Group agreed that such an amendment was not necessary and could raise questions of interpretation in the context of other provisions of the draft convention dealing with notification, in which the proposed wording would not be added. It was also agreed that the commentary should reflect the understanding that neither the definition of notification in draft article 5 (d) nor draft article 15, dealing with notification in the relationship between the assignor and the assignee, nor draft article 18 precluded the assignor in a prior assignment from giving effective notification to the debtor about a subsequent assignment.

Notification of assignments of parts of or undivided interests in receivables

18. Recalling that the Commission did not have the time to consider the legal position of the debtor in the case of one or more notifications with respect to an assignment of a part of or an undivided interest in one or more receivables,[6] the Working Group noted that the matter could be addressed in draft article 18. Support was expressed in favour of a provision under which, at the discretion of the debtor, a notification would be treated as ineffective for the purposes of draft article 19 (debtor's discharge by payment) if the related payment instruction instructed the debtor to pay to a designated payee less than the amount due under the original contract.

[6] Ibid., para. 173.

19. It was stated that such an approach would result in protecting the debtor in a sufficient but flexible way, without prescribing in a regulatory manner what the assignor, the debtor or the assignee ought to do and without creating liability. It was also observed that such an approach would ensure that all possible combinations would be covered of single or multiple assignments of parts of or undivided interests in receivables, whether they involved lump-sum or periodic payments. Furthermore, it was said that such an approach would not affect the effectiveness of a notification of a partial assignment for any purpose other than the discharge of the debtor (e.g. for freezing the rights of set-off that arose from contracts unrelated to the original contract and became available to the debtor after notification). The concern was expressed, however, that if such a distinction were to be drawn, the debtor might not be able to avoid double payment by raising a right of set-off. It was, therefore, suggested that the debtor should be able to ignore a notification of a partial assignment for all purposes. It was observed that that result was already implicit in draft article 17, which provided that the draft convention did not affect the rights and obligations of the debtor without the consent of the debtor "except as provided in this Convention". That suggestion was objected to, since it would inadvertently result in disrupting useful practices. It was also stated that draft articles 9 and 18 respectively validated partial assignments and notifications of partial assignments, and that draft article 17 did nothing to invalidate such assignments or notifications. On that understanding, the Working Group decided that only the issue of the debtor's discharge in the case of a partial assignment needed to be addressed and that draft article 19, dealing with the debtor's discharge, was the appropriate place in the text of the draft convention in which that matter should be addressed.

20. After discussion, the Working Group adopted the substance of draft article 18 unchanged and referred it to the drafting group. The preparation of a provision along the lines described in paragraph 19 above, to be included in draft article 19, was also left to the drafting group.

Article 19
Debtor's discharge by payment

21. The text of draft article 19 as considered by the Working Group was as follows:

> "1. Until the debtor receives notification of the assignment, the debtor is entitled to be discharged by paying in accordance with the original contract. After the debtor receives notification of the assignment, subject to paragraphs 2 to 6 of this article, the debtor is discharged only by paying the assignee or, if otherwise instructed in the notification of the assignment or subsequently by the assignee in a writing received by the debtor, in accordance with such instructions.
>
> "2. If the debtor receives notification of more than one assignment of the same receivable made by the same assignor, the debtor is discharged by paying in accordance with the first notification received.
>
> "3. If the debtor receives more than one payment instruction relating to a single assignment of the same receivable by the same assignor, the debtor is discharged by paying in accordance with the last payment instruction received from the assignee before payment.
>
> "4. If the debtor receives notification of one or more subsequent assignments, the debtor is discharged by paying in accordance with the notification of the last of such subsequent assignments.
>
> "5. If the debtor receives notification of the assignment from the assignee, the debtor is entitled to request the assignee to provide within a reasonable period of

time adequate proof that the assignment has been made and, unless the assignee does so, the debtor is discharged by paying the assignor. Adequate proof includes, but is not limited to, any writing emanating from the assignor and indicating that the assignment has taken place.

"6. This article does not affect any other ground on which payment by the debtor to the person entitled to payment, to a competent judicial or other authority, or to a public deposit fund discharges the debtor."

Discharge by way of a good faith payment to a "purported assignee"

22. In order to ensure that the debtor could rely on a *prima facie* legitimate notification, it was noted that draft article 19 should provide that the debtor was discharged if it paid in good faith a purported assignee. The Working Group agreed that that matter occurred very rarely in practice and did not need to be addressed in the draft convention. It was also agreed that a rule granting the debtor a valid discharge in the case of a purported assignment would go against the law in many legal systems, which did not allow the good faith acquisition of property rights in receivables.

Paragraph 1

23. It was noted that the right of the debtor to discharge its obligation before notification by paying the assignee, rather than the assignor, might disrupt practices in which it was expected that the debtor would continue paying the assignor even after receiving notification (e.g. securitization). The Working Group agreed that no change should be made to paragraph 1, since such a situation would arise very rarely in practice, in particular since the debtor paying the assignee before notification would run the risk of having to pay twice.

24. The view was expressed that the second sentence of paragraph 1 should make it sufficiently clear that a change in the way in which the debtor could discharge its obligation would be triggered by a payment instruction and not by a mere notification. In response, it was observed that paragraph 1 appropriately focused on notification, since in most cases notification would be accompanied by a payment instruction and those practices in which a notification was given without a payment instruction deserved to be recognized. The view was also expressed that the assignee should not be allowed to give notification in the case of the assignor's insolvency since in that way the assignee could obtain an undue preference over other creditors. It was pointed out, however, that a notification in itself could not give an assignee a preference, since that matter was left to the law governing priority. It was also added that, if, under that law, priority was based on the time of notification, an assignee could not obtain priority over the creditors of the assignor or the insolvency administrator, unless notification took place before the commencement of an insolvency proceeding and provided that it did not constitute a fraudulent or preferential transfer.

Paragraph 5 *bis*

25. In order to address the concerns expressed in paragraph 14 above, the proposal was made that a new paragraph 5 *bis* should be introduced in draft article 19 to read as follows:

"If the debtor receives notification of a subsequent assignment from the assignee, the debtor is entitled to request the assignee to provide within a reasonable period of time adequate proof that the subsequent assignment and any prior assignment have been made, and the debtor is discharged by paying the last assignee of a subsequent assignment with respect to which adequate proof is provided. Adequate proof includes, but is not limited to, any writing emanating from the assignor and indicating that the assignment has taken place."

26. Support was expressed in favour of that proposal. It was stated that it was sufficient to protect the debtor in the case of doubt as to how the debtor should discharge its obligation if it received multiple notifications relating to subsequent assignments. As a matter of drafting, it was suggested that the same result could be obtained by combining paragraph 5 with the proposed paragraph 5 *bis*. It was stated that a new paragraph 5 could grant the debtor the right to request adequate proof of a single assignment or of all assignments in a chain of assignments. It was also said that such a new paragraph 5 could provide that, unless such adequate proof were provided to the debtor within a reasonable period of time, the debtor could be discharged, in the case of a single assignment, in accordance with paragraph 1 and, in the case of a chain of assignments, in accordance with paragraph 4. In addition, it was observed that, under the proposed combination of paragraph 5 and the proposed paragraph 5 *bis*, in the case of an assignment from A to B, from B to C and from C to D, if only B gave notification, the debtor would be discharged by paying B; and if D gave notification but not B or C, the debtor would be discharged by paying in accordance with the original contract.

27. While support was expressed in favour of that proposal, some doubt was expressed as to whether it was necessary to revise paragraph 5 at all. It was stated that paragraph 5 was already sufficiently flexible for a court to construe it so as to obtain the appropriate results. It was also observed that there might be some inconsistency between such a new paragraph 5 and article 18, paragraph 3, under which notification of a subsequent assignment constituted notification of all prior assignments. In response, it was stated that paragraph 5 in its current formulation did not fully address the question whether the debtor could request adequate proof of the chain of assignments as a whole or the way in which the debtor could discharge its obligation in the absence of such adequate proof. In addition, it was stated that draft article 18, paragraph 3 was intended to deal with the effectiveness of notification in the case of a chain of assignments, while draft article 19, paragraph 5 was aimed at ensuring that the debtor could request adequate proof and know how to discharge its obligation in the absence of such proof.

28. In order to address those matters, the proposal was made that paragraph 5 should be revised to read along the following lines:

> "If the debtor receives notification of the assignment from the assignee, the debtor is entitled to request the assignee to provide within a reasonable period of time adequate proof that the assignment and all preceding assignments have been made and, unless the assignee does so, the debtor is discharged by paying in accordance with this article as if the notification from the assignee had not been received. Adequate proof of an assignment includes but is not limited to any writing emanating from the assignor and indicating that the assignment has taken place."

29. It was generally agreed that the proposed text addressed in the best possible way the concerns expressed (see para. 14). Subject to that change, the Working Group adopted the substance of draft article 19 and referred it to the drafting group.

Article 20
Defences and rights of set-off of the debtor

30. The text of draft article 20 as considered by the Working Group was as follows:

> "1. In a claim by the assignee against the debtor for payment of the assigned receivables, the debtor may raise against the assignee all defences or rights of set-off arising from the original contract, or any other contract that was part of the same transaction, of which the debtor could avail itself if such claim were made by the assignor.

"2. The debtor may raise against the assignee any other right of set-off, provided that it was available to the debtor at the time notification of the assignment was received.

"3. Notwithstanding paragraphs 1 and 2 of this article, defences and rights of set-off that the debtor may raise pursuant to article 11 against the assignor for breach of agreements limiting in any way the assignor's right to assign its receivables are not available to the debtor against the assignee."

31. The concern was expressed that leaving the meaning of the term "available" in paragraph 2 to law applicable outside the draft convention without specifying that law would create uncertainty as to whether a right of set-off needed to be actual and ascertained, mature or quantified at the time of notification. It was observed that what was at stake was not only the principle that an assignment should not prejudice the debtor's legal position but also the principle that, after notification, the debtor should not be able to take away the rights of the assignee. In order to address that concern, the proposal was made that the question of when a right of set-off should be considered as being "available" to the debtor should be referred to the law governing the receivable. That proposal was objected to. It was stated that a provision similar to paragraph 2 had been included in the Unidroit Convention on International Factoring (Ottawa, 1988; "the Ottawa Convention") without causing any problems. It was also observed that, while the law governing the receivable could be designated as the law applicable to rights of set-off arising from the original contract and related contracts, such an approach would not be appropriate with respect to other rights of set-off such as, for example, rights arising from unrelated contracts, torts or court judgements. In addition, it was pointed out that specifying the law governing set-off might not produce the desirable certainty since in many jurisdictions set-off was treated as a procedural matter and was as such subject to the law of the forum. Moreover, it was said that draft article 29 might be sufficient to refer rights of set-off arising from the original contract and related contracts to the law governing the original contract.

32. After discussion, the Working Group adopted the substance of draft article 20 unchanged and referred it to the drafting group.

Article 21
Agreement not to raise defences or rights of set-off

33. The text of draft article 21 as considered by the Working Group was as follows:

"1. Without prejudice to the law governing the protection of the debtor in transactions made for personal, family or household purposes in the State in which the debtor is located, the debtor may agree with the assignor in a writing signed by the debtor not to raise against the assignee the defences and rights of set-off that it could raise pursuant to article 20. Such an agreement precludes the debtor from raising against the assignee those defences and rights of set-off.

"2. The debtor may not exclude:

(a) defences arising from fraudulent acts on the part of the assignee;
(b) defences based on the debtor's incapacity.

"3. Such an agreement may be modified only by an agreement in a writing signed by the debtor. The effect of such a modification as against the assignee is determined by article 22, paragraph 2."

34. The Working Group adopted the substance of draft article 21 unchanged and referred it to the drafting group.

Article 22
Modification of the original contract

35. The text of draft article 22 as considered by the Working Group was as follows:

> "1. An agreement concluded before notification of the assignment between the assignor and the debtor that affects the assignee's rights is effective as against the assignee and the assignee acquires corresponding rights.
>
> "2. After notification of the assignment, an agreement between the assignor and the debtor that affects the assignee's rights is ineffective as against the assignee unless:
>
> (a) the assignee consents to it; or
>
> (b) the receivable is not fully earned by performance and either modification is provided for in the original contract or, in the context of the original contract, a reasonable assignee would consent to the modification.
>
> "3. Paragraphs 1 and 2 of this article do not affect any right of the assignor or the assignee for breach of an agreement between them.

36. The view was expressed that paragraph 2 might be appropriate for project finance but not for factoring transactions in which, after notification, a modification of the original contract was not binding on the assignee. It was stated that, if such a modification were to be binding on the assignee, the assignee should be, at least, given notice of that modification. In response, it was observed that that matter would typically be addressed in the contract between the assignor and the assignee. In addition, it was pointed out that paragraph 2 was, in any case, based on the assumption that the assignee would be given notice of the modification, even though that matter was in practice left to the discretion of the assignor. After discussion, the Working Group adopted the substance of draft article 22 unchanged and referred it to the drafting group.

Article 23
Recovery of payments

37. The text of draft article 23 as considered by the Working Group was as follows:

> "Without prejudice to the law governing the protection of the debtor in transactions made for personal, family or household purposes in the State in which the debtor is located and the debtor's rights under article 20, failure of the assignor to perform the original contract does not entitle the debtor to recover from the assignee a sum paid by the debtor to the assignor or the assignee."

38. The Working Group agreed that the reference to "the debtor's rights under article 20" was unclear and should be deleted. It was widely felt that draft article 23, referring to affirmative recovery, and draft article 20, referring only to defences and rights of set-off, did not overlap. Subject to that change, the Working Group adopted the substance of draft article 23 and referred it to the drafting group.

Section III
Other parties

Article 24
Law applicable to competing rights of other parties

39. The text of draft article 24 as considered by the Working Group was as follows:

"With the exception of matters which are settled elsewhere in this Convention, and subject to articles 25 and 26, the law of the State in which the assignor is located governs:

"(a) the extent of the right of an assignee in the assigned receivable and the priority of the right of the assignee with respect to competing rights in the assigned receivable of:

(i) another assignee of the same receivable from the same assignor, even if that receivable is not an international receivable and the assignment to that assignee is not an international assignment;

(ii) a creditor of the assignor; and

(iii) the insolvency administrator;

"(b) the existence and extent of the right of the persons listed in paragraph 1 (a) (i) to (iii) in proceeds of the assigned receivable, and the priority of the right of the assignee in those proceeds with respect to competing rights of such persons; and

"(c) whether, by operation of law, a creditor has a right in the assigned receivable as a result of its right in other property of the assignor, and the extent of any such right in the assigned receivable."

Chapeau

40. The Working Group agreed that a reference to draft article 27 was not necessary in the opening words of the chapeau. It was widely felt that, unlike draft articles 25 and 26, draft article 27 was not intended to override the law applicable under draft article 24 but to validate subordination agreements. It was also widely felt that subordination agreements covered in draft article 27 were sufficiently covered by the words "with the exception of matters which are settled elsewhere in this Convention". After discussion, the Working Group adopted the substance of the chapeau unchanged and referred it to the drafting group.

Subparagraph (a)

41. A number of concerns were expressed with respect to the chapeau of subparagraph (a). One concern was that the law of the assignor's location could not effectively cover all priority conflicts with respect to the assigned receivable. The example was given of an assignment of receivables, which under the law of the assignor's location needed to be registered to be effective, while under the law of the assignee's location it would be effective, even in the absence of registration, but only as between the assignor and the assignee, and under the law of the debtor's location it would be effective only if it did not involve future receivables. It was stated that, in such a case, the law of the assignor's location could not displace local law in particular in the case of insolvency of the assignor or the debtor. It was also observed that, in jurisdictions in which formalities were required

for the creation of a security right (e.g. notarization, notification or registration) and in which no distinction was drawn between existence, extent and priority of the assignee's right, all those matters would be referred to the law of the country in which the formalities took place. In response, it was stated that it was exactly cases such as the one described that the draft convention was intended to address. Any limitation as to the assignability of future receivables would be set aside by the draft convention. In addition, referring priority conflicts in the case described to the law of the assignor's location would be particularly appropriate since that law required registration and third parties would normally expect the assignor's law to apply. Moreover, the assignor's law was appropriate since it would be the law governing the main insolvency proceeding with respect to the assignor. If the insolvency proceeding was opened in another jurisdiction (e.g. the country where the debtor was located), the assignor's law would govern priority with the exception of a rule which would be manifestly contrary to the public policy of the debtor's country and subject to non-consensual, preferential rights of that country.

42. Another concern was that the reference to "the extent" of the assignee's right in the assigned receivable expanded excessively, or at least introduced uncertainty as to, the scope of draft article 24. It was stated that the "extent" of an assignee's right was an ambiguous term. It was also observed that, if the "extent" of the assignee's right was relevant to priority (i.e. dealt with the personal (*ad personam*) or the property (*in rem*) nature of the assignee's right or with the question whether full title or only a security right was involved), it was covered by the reference to priority, while, if it was irrelevant to priority, it went beyond the scope of the draft convention. In addition, it was said that referring the full property or security right nature of the assignee's right to the law of the assignor's location might not achieve the desired certainty, since, for example, an outright transfer under the law in one jurisdiction might be characterised as a security right in another jurisdiction. Furthermore, it was observed that it might not be appropriate to refer to "the extent" or "the nature" of an assignment as a pure outright transfer or a security device, since in many jurisdictions a clear distinction was drawn between the assignment and the underlying transaction (or the purpose for which the assignment was made) which the draft convention should not interfere with. In order to address that concern, it was suggested that the reference to the "extent of the right of the assignee in the assigned receivable" should be deleted.

43. That suggestion was objected to. While it was agreed that the formulation of the chapeau of subparagraph (a) could be improved, the view was expressed that failing to cover the *in rem* or *ad personam* nature of the assignee's right and the question whether it was a security or a full property right would significantly reduce the value of the draft convention as a whole. It was explained that, in the absence of certainty as to how to obtain an *in rem* right, an assignee could have no assurance that it would receive payment in the case of the assignor's insolvency. It was also explained that uncertainty as to the law applicable to the nature of the assignee's right as a full property or a security right would continue to impair transactions such as securitization, in which the effectiveness of the outright transfer involved was essential. In addition, it was stated that referring those matters to the assignor's law was particularly useful in the case of the assignor's insolvency, since that law was likely to be in most cases the law governing the assignor's insolvency.

44. Another concern was that the chapeau of subparagraph (a) might not be sufficient to cover the question of the existence of the right of the assignee in the assigned receivable. It was stated that, while the draft convention covered a number of issues relating to the existence of the assignee's right in the assigned receivable, it might not cover them all and in particular it might not cover the existence of such right as a precondition to priority which should be referred to the law of the assignor's location. The example was given of notification as a precondition of both the existence and the priority of the assignee's right in the assigned receivable. In order to address that concern, the suggestion was made to include in the chapeau of subparagraph (a) a reference to the "existence of the assignee's

right in the assigned receivable".

45. That suggestion was also objected to. It was stated that the existence of the assignee's right in the assigned receivable was fully covered in chapter III of the draft convention and, in particular, in draft articles 8 and 9 that covered the formal and substantive validity of an assignment of even a single existing receivable. It was also observed that referring that matter to the assignor's law would undermine the certainty achieved in particular by draft article 9. With respect to the example mentioned above, it was pointed out that, as a matter of formal validity, notification would be subject to the law of the assignor's location or any other law applicable, while, as a matter of substantive validity, the requirement for a notification would be set aside by draft article 9 (i.e. the assignment would be effective and the assignee's right would "exist" even in the absence of notification) and, as a matter of priority, notification would be subject to the law of the assignor's location.

46. In view of the lack of consensus with respect to the question of how to deal with the existence and the extent of the assignee's right in the assigned receivable, it was recalled that, as mandated by the Commission (see para. 2), no change should be approved by the Working Group, unless it received substantial support. In response, it was stated that such a rule could not apply to the reference to "the extent" of the assignee's right in receivables (subparagraph (a)) or to "the existence and extent" of the rights of third parties in proceeds (subparagraph (b)), since references to those terms had been added by the drafting group at the previous session of the Working Group without a specific mandate and without sufficient discussion by the Working Group (A/CN.9/466, paras. 45-49). However, it was stated that, at that session, the Working Group had considered the report of the drafting group and had approved it without any objection. After discussion, the Working Group agreed that the matter should be decided on the basis of substantive and not procedural considerations. It was also agreed that the Working Group should do its best to resolve as many problems as possible and to avoid referring them to the Commission, in particular, since the Commission might not have sufficient time to resolve them.

47. After discussion, it was agreed that no reference should be made in subparagraph (a) to the existence of the assignee's right in the assigned receivable. It was also agreed that subparagraph (a) should be revised to reflect more clearly that "the extent" of the assignee's right referred to the nature of that right as a personal or a property right and as a full-title or security right and that that matter should be covered only with respect to a priority conflict. As to the manner in which that idea could be better expressed in subparagraph (a), various suggestions were made, including the suggestion to refer to "the nature and priority" or to "the priority, including the nature" of the assignee's right, and the suggestion to define "priority" as including "the nature" of the assignee's right in the assigned receivable. All those suggestions were intended to ensure that draft article 24 would not include a free-standing rule as to the extent or the nature of the assignee's right in the assigned receivable for all purposes, but that that rule would be limited to the context of a priority conflict. The suggestion was also made that subparagraph (c) should be merged with subparagraph (a) (ii). There was broad support for that suggestion (see, however, para. 147). Subject to that change and to the necessary changes to ensure that the *in rem* or *ad personam* and the full property or security right nature of the assignee's right in the assigned receivable in the context of a priority conflict would be covered, the Working Group adopted the substance of subparagraph (a) and referred it to the drafting group.

Conflicts of priority in subsequent assignments

48. In response to a question, it was stated that no conflict of priority could arise as between the assignees in a chain of subsequent assignments. It was also observed that such a conflict could arise between any assignee and the creditors or the insolvency administrator of the assignor from whom that assignee obtained the receivables. In such a case, it was

pointed out, draft article 24 would provide the appropriate solution by referring such a priority conflict to the law of the location of the assignor from whom the assignee in question had obtained the receivables directly.

Subparagraph (b)

49. A number of concerns were expressed with regard to subparagraph (b). One concern was that the first part of the subparagraph went beyond the scope of the draft convention in that it did not deal with priority in proceeds but with the existence and the extent of the rights of third parties in proceeds of receivables (and in proceeds of proceeds). It was stated that, to the extent that proceeds would include tangible assets, the existence and the extent of rights of third parties in such assets should be referred to the law of the country in which the assets were located in order to avoid frustrating the normal expectations of parties that provided financing to the assignor relying on the law of the location of those assets. In order to address that concern, the suggestion was made that the first part of subparagraph (b) should be deleted.

50. That suggestion was objected to. It was stated that uncertainty as to the law applicable to the existence and extent of the rights of competing parties in proceeds would significantly reduce the value of, and the certainty achieved by, draft article 24. However, it was generally recognised that the matter of the existence and extent of rights of competing parties in proceeds was a distinct issue from the issue of priority and would need to be addressed differently and in a separate provision. On that understanding, the Working Group decided that the first part of subparagraph (b) should be deleted (for the continuation of the discussion on that matter, see paras. 55-61).

51. Another concern was that subparagraph (b) was incomplete in that it covered the priority of the right of the assignee in proceeds with respect to competing rights of third parties without covering the existence and extent of the right of the assignee. It was agreed that the extent and the priority of the right of the assignee in proceeds with respect to competing rights of third parties should be covered and that, to that extent, subparagraph (b) should be aligned with subparagraph (a) which dealt with the extent and the priority of the assignee's right in the assigned receivable with respect to competing rights of third parties. However, it was stated that the existence of the assignee's right in proceeds, as a precondition to priority, was already covered in draft article 16 and should not be referred to the law of the assignor's location. It was also pointed out that any reference to the existence of the assignee's right in proceeds in subparagraph (b) would inadvertently result in creating uncertainty as to whether that matter was covered in draft article 16.

52. Yet another concern was that referring the priority of the assignee's right in proceeds with respect to competing rights of third parties to the law of the assignor's location would be inappropriate if the proceeds took the form of assets other than receivables. It was stated that with respect to priority in proceeds other than receivables the law of the country in which those proceeds were located would be more appropriate in that it could correspond to the normal expectations of creditors of the assignor lending in reliance on those assets as security. In order to address that concern, it was suggested that the rule in the second part of subparagraph (b) should be limited to proceeds that were receivables. There was broad support for that suggestion. The issue of priority between the right of an assignee and those of third parties in proceeds other than receivables was left to be addressed in a separate provision together with the existence and the extent of the right of such third parties in such proceeds (see para. 50).

53. After discussion, the Working Group agreed that the existence of the assignee's right in proceeds was sufficiently covered in draft article 16 (while the existence of the assignee's right in the assigned receivable was covered in draft articles 8 and 9; see paras. 45 and 49).

Subject to the deletion of the rule contained in the first part of subparagraph (a), on the understanding that it would be dealt with differently and in a separate provision (see paras. 55-61), to adding a reference to the extent or the nature of the assignee's right in proceeds with respect to competing rights of third parties and to limiting the rule in subparagraph (b) to proceeds that were receivables, the Working Group adopted the substance of subparagraph (b) and referred it to the drafting group.

Subparagraph (c)

54. Recalling its decision that subparagraph (c) should be merged with subparagraph (a) (ii) (see para. 47), the Working Group adopted the substance of subparagraph (c) and referred it to the drafting group (see, however, para. 147).

New proposed text

55. The Working Group continued its discussion on draft article 24 on the basis of a proposal that read as follows:

> "1. With the exception of matters that are settled elsewhere in this Convention and subject to articles 25 and 26:
>
> "(a) With respect to the rights of a competing claimant, the law of the State in which the assignor is located governs:
>
> (i) the characteristics and priority of the right of an assignee in the assigned receivable; and
>
> (ii) the characteristics and priority of the right of the assignee in proceeds that are receivables whose assignment is governed by this Convention; and
>
> "(b) The existence and characteristics of the right of a competing claimant in proceeds described below and, with respect to the rights of such a competing claimant, the characteristics and priority of the right of the assignee in such proceeds are governed by:
>
> (i) in the case of money or negotiable instruments not held in a bank account or through a securities intermediary, the law of the State in which such money or instruments are located;
>
> (ii) in the case of investment securities held through a securities intermediary, the law of the State in which the securities intermediary is located;
>
> (iii) in the case of bank deposits, the law of the State in which the bank is located."

56. It was stated that the thrust of the proposal, which had been submitted to facilitate discussion and was subject to further refinement, was to provide a pointer to the law applicable to the most usual types of proceeds in the typical cases where a short-term receivable was assigned and/or the assignee did not receive payment (as, for example, in security transfers or in non-notification practices). It was also observed that the proposal was not intended to interfere with the characterization of rights in proceeds as personal or property rights since that matter was left to the applicable law. In addition, it was pointed out that the solutions offered were widely adopted and in particular the solution offered with respect to the law applicable to investment securities was being considered by the Hague

Conference on Private International Law and the European Union. In that respect, the view was expressed that the formulation of the rule would have to be aligned with the rule that would emerge from those organizations. A note of caution was struck, however, since the focus of those organizations was not on the law applicable to investment securities as proceeds of receivables.

57. While interest was expressed in the proposal, a number of concerns were expressed. One concern was that, in dealing only with some types of asset, the proposed text might inadvertently result in creating special regimes, the application of which might not necessarily enhance certainty. In that connection, the Working Group was urged to consider carefully the relationship between the proposed text and the special proceeds rules contained in draft article 26. In order to address that concern, it was suggested that priority conflicts with respect to proceeds in general should be referred to the law of their location (*lex situs*). While there was no objection in principle, a note of caution was struck that it might not be feasible to agree on a *lex situs* rule that would be generally applicable. It was stated that the proposal dealt with the most likely proceeds of receivable and would cover the vast majority of cases. Therefore, it was observed, an effort should be made to address the law applicable to priority issues with respect to those assets as a matter of priority, without shying away from preparing a special rule on the sole ground that the preparation of a generally applicable rule might not be feasible. In that connection, some doubt was expressed as to the appropriateness of reintroducing into the draft convention as proceeds assets that had been excluded as receivables. It was stated that any work on investment securities in particular would need to be co-ordinated with the work under way at the Hague Conference. The Working Group noted that an expert group meeting might be held with the participation of experts on private international law, in particular from the Hague Conference, in order to consider that matter, as well as the treatment of security interests issues from a private international law point of view, which was one of the subjects to be considered in a study being prepared by the Secretariat. Another concern was that the proposed text might impact on domestic law notions with respect to proceeds and characterization of rights in proceeds. In response, it was stated that the proposal was not intended to address the personal or property nature of rights in proceeds but rather left that matter to domestic law. It was also stated that in adopting a *lex situs* approach, the proponents of the proposal were mindful of the need to adequately protect the rights of parties extending credit to the assignor in reliance on those assets.

58. Yet another concern was that the *lex situs* might not be appropriate in all cases where bank deposits were involved. It was stated that, in some countries, priority issues with respect to proceeds from deposit accounts were subject to the law of the assignor's location. In response, it was argued that referring those issues to the law of the location of the bank was appropriate for a number of reasons, including addressing regulatory, money-laundering and State-guarantee issues. It was agreed, however, that, in view of the divergent views expressed, States would need time to consult in advance of the next Commission session on the appropriate applicable law policy.

59. In the discussion, a number of issues were identified on which further refinement would be needed. One issue was that of location. It was stated that it would need to be clarified whether, in the case of banks, the location of the head-office or of a branch office also was meant. Another issue was the exact meaning of the terms "investment securities" and "intermediary". Yet another issue was whether "proceeds" meant the immediate proceeds of the receivables or also proceeds of proceeds. Yet another issue was the distinction drawn between negotiable instruments held and not held in a bank account or through a securities intermediary.

60. As to the first part of paragraph 1 (b), it was suggested that it should be deleted or be reflected only in the report of the Working Group, since a number of concerns had been

expressed in that regard (see para. 42) and the text had not been presented in a separate rule as had been agreed upon (see para. 50). While it was admitted that the matter had not been sufficiently discussed in that context, that suggestion was objected to since deleting the text might inadvertently result in losing sight of the problem dealt with in that provision. After discussion, it was agreed that the text could be preserved in draft article 24 on the understanding that it would appear in a separate paragraph and within separate square brackets.

61. After discussion, it was agreed that the proposal was valuable and should be retained in the text of draft article 24. It was also agreed that, in view of the concerns expressed about whether the draft convention should include private international law rules dealing with priority issues with respect to types of asset that were not receivables and about which the appropriate applicable law should be, and the issues identified for further refinement, the proposed text should be retained within square brackets. In addition, it was agreed that the first part of paragraph 1 (b) in the proposed text, which dealt with a separate issue, should be reflected in a separate paragraph and within separate square brackets. Furthermore, it was agreed that, in order to provide an alternative presentation of the matters covered in paragraph 1 whereby paragraph 1 (a) would deal with priority in respect of receivables and paragraph 1 (b) would deal with priority in proceeds, paragraph 1 (a) (ii) should be moved to paragraph 1 (b) and be placed within separate square brackets, pending determination by the Commission of the placement of that provision.

Special priority rules

62. The view was expressed that special priority rules should be devised with respect to receivables owed under insurance policies and negotiable instruments transferred by delivery without a necessary endorsement. It was stated that the assignment of insurance receivables had not been excluded from the scope of the draft convention, while draft article 4, paragraph 1 (b) was not sufficient to exclude such transfers of negotiable instruments. It was also observed that priority conflicts with respect to insurance receivables were typically referred to the law of the insurer's location, while priority with respect to negotiable instruments was referred to the law of their location. After discussion, the Working Group agreed that the rule in draft article 24 was sufficient with respect to insurance receivables. As to transfers of negotiable instruments by mere delivery without a necessary endorsement, the Working Group noted that the intent of draft article 4, paragraph 1 (b) was to exclude transfers of negotiable instruments, whether made by mere delivery or by delivery and endorsement.[7] In view of the ambiguity, however, of draft article 4, paragraph 1 (b), the Working Group decided that the matter should be brought to the attention of the Commission for further clarification.

63. In the discussion, the view was expressed that transfers of negotiable instruments by a book entry into a depository's accounts should also be excluded. It was stated that draft article 4, paragraph 1 (b) was not sufficient to ensure that result, since no delivery occurred in such transfers. It was also observed that draft article 4, paragraph 2 (b) or (f) might be equally insufficient to exclude such transfers, since they could involve negotiable instruments that would not fall under the category of "investment securities". In addition, it was pointed out that the exclusion of such transfers was necessary, since those instruments might call for special treatment as regards the law applicable to priority conflicts. Taking note of the matter, the Working Group decided to discuss it in the context of draft article 4.[8]

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[7] Ibid., para. 29.

[8] As the Working Group did not have the time to consider draft article 4, the matter was left to the Commission.

Article 25
Public policy and preferential rights

64. The text of draft article 25 as considered by the Working Group was as follows:

> "1. The application of a provision of the law of the State in which the assignor is located may be refused by a court or other competent authority only if that provision is manifestly contrary to the public policy of the forum State.
>
> "2. In an insolvency proceeding commenced in a State other than the State in which the assignor is located, any preferential right which arises under the law of the forum State and is given priority status over the rights of an assignee in insolvency proceedings under the law of that State has such priority notwithstanding article 24. A State may deposit at any time a declaration identifying those preferential rights."

65. The concern was expressed that paragraph 2 was formulated in an overly broad way and might inadvertently result in giving priority even to consensual rights and even in cases in which the forum might not wish to apply its own rules and to give priority to preferential rights existing under its own law since no fundamental policy issue might be involved in a particular case. In order to address that concern, the suggestion was made that reference should be made to preferential rights arising by operation of law and to the discretion of the forum to determine whether to apply its own rules. Subject to that change, the Working Group adopted the substance of draft article 25 and referred it to the drafting group.

Article 26
Special proceeds rules

66. The text of draft article 26 as considered by the Working Group was as follows:

> "1. If proceeds of the assigned receivable are received by the assignee, the assignee is entitled to retain those proceeds to the extent that the assignee's right in the assigned receivable had priority over competing rights in the assigned receivable of the persons described in subparagraph (a) (i) to (iii) of article 24.
>
> "2. If proceeds of the assigned receivable are received by the assignor, the right of the assignee in those proceeds has priority over competing rights in those proceeds of the persons described in subparagraph (a) (i) to (iii) of article 24 to the same extent as the assignee's right had priority over the right in the assigned receivable of those persons if:
>
> "(a) the assignor has received the proceeds under instructions from the assignee to hold the proceeds for the benefit of the assignee; and
>
> "(b) the proceeds are held by the assignor for the benefit of the assignee separately and are reasonably identifiable from the assets of the assignor, such as in the case of a separate deposit account containing only cash receipts from receivables assigned to the assignee."

67. The Working Group noted that paragraph 1 might inadvertently result in granting an assignee priority with respect to proceeds of proceeds even if another person had priority with respect to proceeds of the assigned receivable under the law of the assignor's location. Recalling its decision to limit the application of the law of the assignor's location to proceeds that were receivables (see para. 53), the Working Group agreed that that result was

appropriate. In line with its decision with respect to draft article 24 (see para. 53), the Working Group decided that reference should be made in draft article 26 to "proceeds" in general and not to "proceeds of the assigned receivable" only. Subject to that change, the Working Group adopted the substance of draft article 26 and referred it to the drafting group.

Article 27
Subordination

68. The text of draft article 27 as considered by the Working Group was as follows:

> "An assignee entitled to priority may at any time subordinate unilaterally or by agreement its priority in favour of any existing or future assignees."

69. The Working Group adopted the substance of draft article 27 unchanged and referred it to the drafting group.

Chapter V
Conflict of laws

Scope or purpose of chapter V (article 1, paragraph 4)

70. Before entering into a discussion of the provisions of chapter V, the Working Group considered the general usefulness of chapter V and its scope as reflected in draft article 1, paragraph 4, which appeared within square brackets pending final determination of the scope or the purpose of chapter V. It was generally agreed that chapter V was useful for States that did not have any rules on the law applicable to assignment-related issues or did not have adequate rules on all such issues. It was also agreed that, to the extent that the law applicable to priority issues was far from clear even in States with sufficiently developed private international law rules, chapter V usefully resolved that matter for the benefit of all States. It was further agreed that, as a matter of policy, if, in the absence of a substantive law solution to a commercial law problem, no solution was offered at all, the unification of the law of international trade, which was at the heart of UNCITRAL's mandate, could not be sufficiently advanced. Furthermore, it was widely felt that the possibility for an opting-out by States sufficiently addressed the concern of some States that such an approach might not be appropriate as a matter of policy or might lead to conflicts with existing conventions, such as the European Union Convention on the Law Applicable to Contractual Obligations (Rome, 1980; "the Rome Convention"). The suggestion that was made in that connection to make chapter V subject to an opt-in did not attract sufficient support. It was felt that an opt-in by States would inadvertently result in giving the wrong impression that chapter V was not an integral and necessary part of the draft convention.

71. As to the scope of chapter V, it was noted that, under draft article 1, paragraph 4, chapter V could apply to transactions falling fully within the scope of the draft convention as a whole (i.e. to international assignments of receivables or to assignments of international receivables, provided that the relevant party was located in a Contracting State and the relevant transaction was not excluded) or to transactions falling outside the scope of the provisions of the draft convention outside chapter V (in view of the fact that, unlike those provisions, chapter V could apply, irrespective of whether any party was located in a Contracting State). It was also noted that with respect to transactions that were fully within the scope of the draft convention chapter V would usefully supplement the rest of the draft convention, filling any gaps left, while, with respect to transactions that were outside the scope of the provisions of the draft convention outside chapter V, chapter V would provide a second layer of unification, a mini-convention like chapter VI of the United Nations

Convention on Independent Guarantees and Stand-by Letters of Credit (New York, 1995; "the Guarantee and Standby Convention").

72. Strong support was expressed for draft article 1, paragraph 4. It was widely felt that there was no reason to require for the application of chapter V a territorial connection between an assignment and a Contracting State. A suggestion, however, to further extend the scope of chapter V by making its application independent of the definition of internationality in draft article 3 did not attract sufficient support. As to the placement of the rule contained in draft article 1, paragraph 4, it was agreed that it should be retained in draft article 1, since it contained an exception to the rule on territorial connection contained in article 1, paragraphs 1 and 3.

73. In order to ensure that, in cases in which both chapter V and the rest of the draft convention would be applicable, States would apply first the rest of the draft convention and then chapter V, it was suggested that a rule dealing with the hierarchy between chapter V and the rest of the draft convention should be inserted at the beginning of chapter V. It was also suggested that, for the sake of clarity as to the scope of chapter V, that provision should refer back to draft article 1, paragraph 4. There was broad support for both suggestions.

74. Another suggestion to address the hierarchy between chapter V and the private international law rules of the forum did not attract sufficient support. It was widely felt that, to the extent that the forum was a Contracting State and chapter V covered an issue, chapter V would displace the equivalent private international law rules of the forum, while, to the extent that the forum was not in a Contracting State or chapter V did not address a matter, chapter V would be supplemented by the private international law rules of the forum. It was also agreed that that matter could be clarified in the commentary and in any case did not need to be addressed in draft article 7, paragraph 2. It was further agreed that the commentary should also clarify that the possibility of applying general principles or the law applicable by virtue of the private international rules of the forum extended only to the substantive law provisions of the draft convention.[9]

75. Subject to the deletion of the square brackets, the Working Group adopted the substance of draft article 1, paragraph 4 and referred it to the drafting group. The preparation and the inclusion of a new provision on the hierarchy between chapter V and the rest of the draft convention along the lines described in paragraph 73 above was also referred to the drafting group.

Form of assignment

76. The suggestion was made that a new provision should be included in chapter V to address the law applicable to the formal validity of the assignment and the contract of assignment. The matter was referred to an *ad hoc* group that undertook to present a proposal (see para. 174).

Article 28
Law applicable to the rights and obligations of the assignor and the assignee

77. The text of draft article 28 as considered by the Working Group was as follows:

> "1. [With the exception of matters which are settled in this Convention,] the rights and obligations of the assignor and the assignee under the contract of

[9] A/55/17, para. 124.

assignment are governed by the law expressly chosen by the assignor and the assignee.

"2. In the absence of a choice of law by the assignor and the assignee, their rights and obligations under the contract of assignment are governed by the law of the State with which the contract of assignment is most closely connected. In the absence of proof to the contrary, the contract of assignment is presumed to be most closely connected with the State in which the assignor has its place of business. If the assignor has more than one place of business, reference is to be made to the place of business most closely connected to the contract. If the assignor does not have a place of business, reference is to be made to the habitual residence of the assignor.

"3. If the contract of assignment is connected with one State only, the fact that the assignor and the assignee have chosen the law of another State does not prejudice the application of the law of the State with which the assignment is connected to the extent that law cannot be derogated from by contract."

78. It was noted that the requirement for an express choice of law in paragraph 1 and the rebuttable presumption in paragraph 2 might run against generally acceptable private international law rules and be unnecessarily rigid. It was also noted that, after the decision of the Working Group to limit the application of chapter V to assignments with an international element under draft article 3 (see paras. 72 and 75), the vast majority of cases in which chapter V could apply would involve an international element. In view of that fact, it was agreed, paragraph 3 would not be necessary.

79. After discussion, the Working Group agreed that the word "expressly" in paragraph 1 and the second sentence of paragraph 2 should be deleted. The Working Group also agreed that paragraph 3 should be deleted on the understanding that the commentary would refer to the very limited cases in which the draft convention might apply to purely domestic transactions (i.e. to subsequent assignments in a chain of assignments in which a prior assignment was governed by the draft convention). Subject to those changes, the Working Group adopted the substance of draft article 28 and referred it to the drafting group.

Article 29
Law applicable to the rights and obligations of the assignee and the debtor

80. The text of draft article 29 as considered by the Working Group was as follows:

"[With the exception of matters which are settled in this Convention,] the law governing the receivable to which the assignment relates determines the enforceability of contractual limitations on assignment, the relationship between the assignee and the debtor, the conditions under which the assignment can be invoked against the debtor and any question whether the debtor's obligations have been discharged."

81. It was noted that, in view of the limitation of the scope of application of the draft convention to assignments of contractual receivables, the law governing the receivable could be only the law of the original contract. It was, therefore, suggested that draft article 29 should refer directly to the law of the original contract. In addition, it was suggested that, in order to ensure consistency and avoid raising questions of interpretation, the word "effectiveness" should be substituted for the word "enforceability". Moreover, it was suggested that the effectiveness of contractual limitations should be qualified by reference to the relationship between the assignee and the debtor. It was further suggested that the commentary could usefully clarify that rights of set-off arising from the original contract or

related contracts were subject to the law of the original contract. It was stated, however, that the commentary should clarify that the existence, but not necessarily the exercise, of a contractual right of set-off was subject to the law governing the contract. The Working Group adopted all those suggestions.

82. In the discussion, the suggestion was also made that draft article 29 should cover not only contractual but also statutory limitations. That suggestion was objected to. It was stated that statutory limitations were intended to protect the rights of the assignor or the debtor, appeared in various forms, were the result of *lois de police* the application of which was territorially limited and were, in any case, sufficiently covered in draft article 31.

83. Furthermore, the suggestion was made that the rule contained in draft article 29 should be repeated in the context of draft article 20. It was stated that such an approach could ensure that the benefits to be derived from the application of draft article 29 would not be lost if a State opted out of chapter V. It was also stated that such an approach would be in line with the approach followed with respect to issues of priority. The Working Group received that suggestion with mixed feelings. On the one hand, the concern was expressed that including yet another private international law provision in the substantive law part of the draft convention might raise questions of legislative policy and make the draft convention less acceptable to States. On the other hand, the suggestion was received with interest and support, since it was consistent with the overall aims of the draft convention. It was stated, however, that that suggestion raised a very important matter and, therefore, needed to be carefully considered in consultation with representatives of the industry. It was also pointed out that matters to be considered included whether the contents of draft article 29 should be repeated in draft article 20 or whether a State should be given additional options as to chapter V (i.e. to opt out of chapter V with the exception of provisions such as draft article 29). It was also stated that, if draft article 29 were to be repeated in draft article 20, there might be a need to include also in that provision a reference to mandatory law and public policy. After discussion, the Working Group decided that the matter should be referred to the Commission (see also para. 111).

84. Subject to the changes referred to in paragraph 81 above, the Working Group adopted the substance of draft article 29 and referred it to the drafting group.

Article 30
Law applicable to competing rights of other parties

85. The text of draft article 30 as considered by the Working Group was as follows:

"1. The law of the State in which the assignor is located governs:

"(a) the extent of the right of an assignee in the assigned receivable and the priority of the right of the assignee with respect to competing rights in the assigned receivable of:

(i) another assignee of the same receivable from the same assignor, even if that receivable is not an international receivable and the assignment to that assignee is not an international assignment;

(ii) a creditor of the assignor; and

(iii) the insolvency administrator;

"(b) the existence and extent of the right of the persons listed in paragraph 1

(a) (i) to (iii) in proceeds of the assigned receivable, and the priority of the right of the assignee in those proceeds with respect to competing rights of such persons; and

"(c) whether, by operation of law, a creditor has a right in the assigned receivable as a result of its right in other property of the assignor, and the extent of any such right in the assigned receivable.

"2. The application of a provision of the law of the State in which the assignor is located may be refused by a court or other competent authority only if that provision is manifestly contrary to the public policy of the forum State.

"3. In an insolvency proceeding commenced in a State other than the State in which the assignor is located, any preferential right which arises under the law of the forum State and is given priority status over the rights of an assignee in insolvency proceedings under the law of that State has such priority notwithstanding paragraph 1 of this article. A State may deposit at any time a declaration identifying those preferential rights."

86. It was noted that draft article 30 repeated the rules contained in draft articles 24 and 25, since chapter V could apply to transactions outside the scope of chapters I through IV of the draft convention (i.e. irrespective of whether the relevant party was located in a Contracting State; see draft article 1, paragraph 4). It was also noted that paragraph 1 should be aligned with draft article 24 as revised, while paragraph 2 might not be necessary as it repeated the rule contained in draft article 32. It was suggested that the last sentence of paragraph 3 should be deleted, since chapter V applied irrespective of whether the relevant party was located in a Contracting State that could make a declaration. Subject to those changes, the Working Group adopted the substance of draft article 30 and referred it to the drafting group.

Article 31
Mandatory rules

87. The text of draft article 31 as considered by the Working Group was as follows:

"1. Nothing in articles 28 and 29 restricts the application of the rules of the law of the forum State in a situation where they are mandatory irrespective of the law otherwise applicable.

"2. Nothing in articles 28 and 29 restricts the application of the mandatory rules of the law of another State with which the matters settled in those articles have a close connection if and in so far as, under the law of that other State, those rules must be applied irrespective of the law otherwise applicable."

88. It was noted that, following generally acceptable principles of private international law, draft article 31 permitted the forum to set aside rules of the applicable law and apply its own mandatory rules or those of another State. It was also noted that setting aside the priority provisions of the applicable law was not allowed on the understanding that those provisions would be of a mandatory nature themselves and that setting them aside could result in uncertainty that would have a negative impact on the cost or the availability of credit. It was also noted that draft article 30, paragraph 3 contained a specific rule that was sufficient in that respect. After discussion, the Working Group adopted the substance of draft article 31 unchanged and referred it to the drafting group.

Article 32
Public policy

89. The text of draft article 32 as considered by the Working Group was as follows:

> "With regard to matters settled in this chapter, the application of a provision of the law specified in this chapter may be refused by a court or other competent authority only if that provision is manifestly contrary to the public policy of the forum State."

90. It was noted that draft article 32 was a rule that was typically found in private international law texts and that its main difference with draft article 31 was that its application could result in setting aside rules of the applicable law but not in the application of rules of the forum State. After discussion, the Working Group adopted the substance of draft article 32 unchanged and referred it to the drafting group.

Chapter VI
Final provisions

Article 33
Depositary

91. The text of draft article 33 as considered by the Working Group was as follows:

> "The Secretary-General of the United Nations is the depositary of this Convention."

92. The Working Group adopted the substance of draft article 33 unchanged and referred it to the drafting group.

Article 34
Signature, ratification, acceptance, approval, accession

93. The text of draft article 34 as considered by the Working Group was as follows:

> "1. This Convention is open for signature by all States at the Headquarters of the United Nations, New York, until ...
>
> "2. This Convention is subject to ratification, acceptance or approval by the signatory States.
>
> "3. This Convention is open to accession by all States which are not signatory States as from the date it is open for signature.
>
> "4. Instruments of ratification, acceptance, approval and accession are to be deposited with the Secretary-General of the United Nations."

94. In connection with paragraph 1, it was agreed that, given the complexity of the matters dealt with in the draft convention, the period during which, once concluded, it should be open for signature by States should be two years. On that understanding, the Working Group adopted the substance of draft article 34 unchanged and referred it to the drafting group.

Article 35
Application to territorial units

95. The text of draft article 35 as considered by the Working Group was as follows:

> "1. If a State has two or more territorial units in which different systems of law are applicable in relation to the matters dealt with in this Convention, it may, at any time, declare that this Convention is to extend to all its territorial units or only one or more of them, and may at any time substitute another declaration for its earlier declaration.
>
> "2. These declarations are to state expressly the territorial units to which the Convention extends.
>
> "3. If, by virtue of a declaration under this article, this Convention does not extend to all territorial units of a State and the assignor or the debtor is located in a territorial unit to which the Convention does not extend, this location is considered not to be in a Contracting State.
>
> "4. If a State makes no declaration under paragraph 1 of this article, the Convention is to extend to all territorial units of that State."

96. It was noted that draft article 35 was intended to ensure that a federal State would be able to adopt the draft convention, even if it did not wish to or could not, under internal law, have it apply to all territorial units. The Working Group adopted draft article 35 unchanged and referred it to the drafting group. It was also agreed that a new provision should be included in the draft convention to deal with applicable law issues in the case of a federal State. Language along the following lines was proposed:

> "If a State has two or more territorial units whose law may govern a matter referred to in chapters IV and V of this Convention, a reference in those chapters to the law of a State in which a person or property is located means the law applicable in the territorial unit in which the person or property is located, including rules that render applicable the law of another territorial unit of that State. Such a State may specify by declaration at any time how it will implement this article."

97. It was agreed that the proposed provision should be included in the draft convention right after draft article 35 within square brackets for further consideration by the Commission.

Article 36
Conflicts with other international agreements

98. The text of draft article 36 as considered by the Working Group was as follows:

> "This Convention does not prevail over any international agreement which has already been or may be entered into and which contains provisions concerning the matters governed by this Convention[, provided that the assignor is located in a State party to such agreement or, with respect to the provisions of this Convention which deal with the rights and obligations of the debtor, the debtor is located in a State party to such agreement]."

99. Broad support was expressed in favour of the principle contained in draft article 36. Subject to further review of existing international agreements, it was widely felt that draft article 36 reflected normal practice in giving precedence to other conventions that dealt with

matters governed by the draft convention. It was agreed that draft article 36 should also include a reference to the application of the debtor-related provisions of the draft convention by virtue of private international law rules. The suggestion was also made that reference should be made to the time when the assignor or the debtor should be located in a State party to an international convention. There was sufficient support for that suggestion. Subject to those changes, the Working Group adopted draft article 36 and referred it to the drafting group.

100. The Working Group next considered potential conflicts with the Ottawa Convention, the Inter-American Convention on the Law Applicable to International Contracts (Mexico City, 1994; "the Mexico City Convention"), the Rome Convention, the Unidroit draft Convention on International Interests in Mobile Equipment ("the mobile equipment convention"), the Guarantee and Standby Convention, the European Union Insolvency Regulation and regulations in general.

Ottawa Convention

101. It was widely felt that, in the case where both the draft convention and the Ottawa Convention applied to a particular transaction, the draft convention should prevail. It was stated that the scope of application of the draft convention was broader than the scope of the Ottawa Convention. It was also observed that the draft convention addressed issues that were left unaddressed in the Ottawa Convention. Language along the following lines was proposed: "Notwithstanding paragraph 1 of this article, this Convention prevails over the Ottawa Convention."

102. The suggestion was made, however, that the draft convention should not affect the application of the Ottawa Convention to cases in which the debtor was located in a State that was party to the Ottawa Convention but not to the draft convention. It was stated that, in such a case, the rights of the assignee as against the debtor that might exist under the Ottawa Convention should be preserved. Language along the following lines was proposed: "Subject to ...[the rule in paragraph 101 above], nothing in this Convention precludes the application of the Ottawa Convention to the extent that it is applicable." Subject to those changes, the Working Group adopted the substance of the proposed wording and referred it to the drafting group.

Mexico City and Rome Conventions

103. While it was noted that there were no conflicts between the draft convention and the Mexico City Convention, it was stated that the matter was currently being considered among States parties to that Convention. It was also noted that, after the changes made to draft article 28 (see para. 79), the potential for conflicts with the Rome Convention had been reduced. On the assumption that article 12 of the Rome Convention addressed priority issues (a matter that was far from being clear), it was stated that a conflict could arise with draft articles 24 and 30 of the draft convention. In order to eliminate the possibility for a conflict with draft article 24, the suggestion was made that draft article 24 should be moved to chapter V (which was subject to an opt-out) or be made subject to reservation. It was stated that the matter could be left to the Commission. That suggestion was strongly objected to. It was stated that casting any doubt as to the applicability of draft article 24 would significantly reduce the value of the draft convention, since draft article 24 was one of the most important provisions of the draft convention. It was also observed that draft article 36 was sufficient in dealing with any conflict with article 12 of the Rome Convention to the extent that such conflict would be resolved in favour of the Rome Convention. After discussion, the Working Group agreed that there was no need for an additional provision dealing with conflicts with the Rome Convention.

Unidroit draft Convention on International Interests in Mobile Equipment

104. Differing views were expressed with respect to conflicts between the draft convention and the mobile equipment convention. One view was that the assignment of receivables arising from the sale or lease of certain types of high-value mobile equipment, such as aircraft, should be excluded. It was stated that such receivables formed an integral part of equipment-financing practices and should be subject to a separate regime. It was also observed that such an approach would not affect practices, such as factoring, in view of the limited scope of the mobile equipment convention. In addition, it was stated that the matter could effectively be resolved by States at a diplomatic conference scheduled to take place in May 2001 for the adoption of the mobile equipment convention. Moreover, in view of the possibility that the assignment-related provisions of the mobile equipment convention might be aligned with the provisions of the draft convention, the potential for conflict would be significantly reduced. Furthermore, it was said that, taking into account the decisions to be made by States at the diplomatic conference, the Commission could decide how to address the matter.

105. Another view was that the assignment of receivables arising from the sale or lease of mobile equipment should not be excluded from the scope of the draft convention. It was stated that an exclusionary approach would be inappropriate in view of the fact that, in several jurisdictions, receivables financing practices could involve the assignment of receivables to be covered by the mobile equipment convention. It was also observed that an exclusionary approach would inadvertently result in creating a gap until the mobile equipment convention was concluded and entered into force. Furthermore, it was pointed out that an exclusion was not necessary since, under draft article 36, any conflict would be resolved in favour of the mobile equipment convention. After discussion, the Working Group agreed that the matter did not need to be addressed by way of an outright exclusion or by way of a special provision dealing with conflicts. It was also agreed that draft article 36 was sufficient in that its application would result in giving precedence to the mobile equipment convention. The Working Group reached that decision on the understanding that the Commission might have to reconsider the matter in view of the decisions to be taken at the diplomatic conference scheduled to take place for the adoption of the mobile equipment convention.

United Nations Convention on Independent Guarantees and Stand-by Letters of Credit

106. The Working Group noted that, after the decision made by the Commission to exclude the application of independent guarantees and stand-by letters of credit,[10] there was no potential for conflicts between the Guarantee and Standby Convention and the draft convention.

European Union Insolvency Regulation

107. It was noted that no conflicts arose with the European Union Insolvency Regulation, since: the notion of central administration was identical with the centre of main interests used in that Regulation; that Regulation did not affect rights *in rem* in a main insolvency proceeding; and, while that Regulation might affect rights *in rem* in a secondary insolvency proceeding (articles 2 (g), 4 and 28), article 25 would be sufficient to preserve, for example, super-priority rights and, in any case, the draft convention would not affect special insolvency rights.

[10] Ibid., para. 65.

Regulations

108. It was agreed that no reference needed to be made in draft article 36 to regulations of regional organizations. It was stated that, if there was a conflict between the draft convention and any regulations, the regulations would prevail in any case either because that would be the result of national law or because States members of the relevant regional organization would not adopt the draft convention in the first place.

Article 37
Application of chapter V

109. The text of draft article 37 as considered by the Working Group was as follows:

"A State may declare at any time that it will not be bound by chapter V."

110. Noting that draft article 37 made it possible for a State to make a declaration even before it had become a Contracting State by ratification, acceptance, approval or accession, the Working Group agreed that reference should be made to "a State" rather than to "a Contracting State".

111. In order to give States the option to exclude the application of chapter V in whole or in part, it was proposed that the words "or any part thereof" should be added after the word "chapter V". While some support was expressed for the proposal, objections thereto were voiced on the ground that such an option would reduce legal certainty and predictability in the application of the draft convention, since different jurisdictions might retain different provisions of chapter V. Recalling its decision, however, to leave to the Commission the question whether draft article 29 should be repeated in draft article 20 so that it would not be subject to an opt-out by States (see para. 83), the Working Group left also the proposed amendment to draft article 37 to the Commission.

Article 38
Limitations relating to Governments and other public entities

112. The text of draft article 38 as considered by the Working Group was as follows:

"A State may declare at any time that it will not be bound by articles 11 and 12 if the debtor or any person granting a personal or property right securing payment of the assigned receivable is located in that State at the time of the conclusion of the original contract and is a Government, central or local, any subdivision thereof, or any public entity. If a State has made such a declaration, articles 11 and 12 do not affect the rights and obligations of that debtor or person."

113. It was noted that draft article 38 was addressed to States that did not limit the assignability of sovereign receivables by statute, since statutory limitations were not affected by the draft convention (draft article 9, paragraph 3). It was stated that that limitation should be borne in mind in order not to overstate the import of draft article 38.

114. While support was expressed for the overall policy reflected in draft article 38, a number of suggestions were made as to the way in which that policy could be better implemented. One suggestion was that the wording of draft article 38 should be refined so as to give States the possibility of limiting the scope of the reservation to certain categories of public entities, rather than making it an across-the-board reservation. It was stated that States would be well advised to exercise restraint in making reservations under draft article 38, since such reservations might impair or reduce the ability of governmental entities to

obtain access to credit at more favourable terms. Another suggestion was that reference should be made to an entity constituted for a public purpose. It was observed that such an approach would ensure that States would have sufficient flexibility in excluding public entities, including commercial entities publicly owned or serving a public purpose. It was also pointed out that such an approach would avoid the use of the term "public entity" the meaning of which was not sufficiently clear and was likely to differ from State to State. Another suggestion was that States should be allowed to list in the same or a different declaration the types of entity to which they wished the declaration to apply. It was generally felt that that proposal would lead to enhanced transparency and predictability in the application of the draft convention. All those suggestions received sufficient support. Subject to those changes, the Working Group adopted the substance of draft article 38 and referred it to the drafting group.

Article 39
Other exclusions

115. The text of draft article 39 as considered by the Working Group was as follows:

> "[A State may declare at any time that it will not apply the Convention to specific practices listed in a declaration. In such a case, the Convention does not apply to such practices if the assignor is located in such a State or, with respect to the provisions of this Convention which deal with the rights and obligations of the debtor, the debtor is located in such a State.]"

116. The Working Group heard expressions of both strong objection to and strong support for draft article 39. In favour of retaining draft article 39 it was argued that it would make the draft convention more acceptable to States. In that connection, it was stated that the provision would allow States that were not fully satisfied with the current exclusions to exclude further practices (e.g. foreign exchange transactions to the extent they were not already excluded or practices relating to consumer receivables unless language were included in the draft convention to ensure that consumer-protection legislation would not be interfered with[11]). It was also observed that the provision would make the draft convention a breathing and living text that could be easily adjusted to future developments that could not be foreseen at the present stage. In favour of deleting draft article 39, it was stated that the draft convention already contained an extensive list of exclusions and that the need to ensure certainty and uniformity in its application might be seriously jeopardized if States were allowed to make additional exclusions unilaterally. The Working Group took note of the differing views and decided to retain the provision within square brackets.

117. Without prejudice to a future decision on the matter, the Working Group proceeded to consider proposals as to the formulation of draft article 39. It was agreed that, in order to align the language in draft article 39 with the wording of draft article 4, paragraph 4, wording along the lines of "types of assignments" and "assignments of types of receivables" should be used instead of the expression "specific practices". Furthermore, with a view to circumscribing more clearly the effects of a declaration under draft article 39, it was proposed to substitute the second sentence of draft article 39 with a new second paragraph along the following lines:

> "If a State makes a declaration under paragraph (1) of this article:
>
> "(a) The Convention does not apply to such practices if the assignor is located at the time of the conclusion of the contract of assignment in such a State;

[11] Ibid., paras. 170-172.

and

"(b) The provisions of the Convention that affect the rights and obligations of the debtor do not apply if, at the time of the conclusion of the original contract, the debtor is located in such a State or the law governing the receivable is the law of such a State."

118. Support was expressed for the proposed text. It was also agreed that it should refer to the time after the declaration took effect. Subject to the changes referred to in paragraph 117, the Working Group decided to retain draft article 39 within square brackets and referred it to the drafting group.

Article 40
Application of the annex

119. The text of draft article 40 as considered by the Working Group was as follows:

"1. A Contracting State may at any time declare that [it will be bound either by sections I and/or II or by section III of the annex to this Convention.] [it:

"(a) will be bound by the priority rules based on registration set out in section I of the annex and will participate in the international registration system established pursuant to section II of the annex;

"(b) will be bound by the priority rules based on registration set out in section I of the annex and will effectuate such rules by use of a registration system that fulfils the purposes of such rules [as set forth in regulations promulgated pursuant to section II of the annex], in which case, for the purposes of section I of the annex, registration pursuant to such a system shall have the same effect as registration pursuant to section II of the annex; or

"(c) will be bound by the priority rules based on the time of the contract of assignment set out in section III of the annex.

"2. For the purposes of article 24, the law of a Contracting State that has made a declaration pursuant to paragraph 1 (a) or 1 (b) of this article is the set of rules set forth in section I of the annex, and the law of a Contracting State that has made a declaration pursuant to paragraph 1 (c) of this article is the set of rules set forth in section III of the annex. The Contracting State may establish rules pursuant to which assignments made before the declaration takes effect shall, within a reasonable time, become subject to those rules.

"3. A Contracting State that has not made a declaration pursuant to paragraph 1 of this article may, pursuant to its domestic priority rules, utilize the registration system established pursuant to section II of the annex.]"

120. Noting that draft article 40 dealt with the application of the annex and in view of the doubt expressed as to whether the annex should be retained, the Working Group agreed to defer the discussion of draft article 40 until it had considered the annex (see para. 169).

Article 41
Effect of declaration

121. The text of draft article 41 as considered by the Working Group was as follows:

> "1. Declarations made under articles 35, paragraph 1 and 37 to 40 at the time of signature are subject to confirmation upon ratification, acceptance or approval.
>
> "2. Declarations and confirmations of declarations are to be in writing and to be formally notified to the depositary.
>
> "3. A declaration takes effect simultaneously with the entry into force of this Convention in respect of the State concerned. However, a declaration of which the depositary receives formal notification after such entry into force takes effect on the first day of the month following the expiration of six months after the date of its receipt by the depositary.
>
> "4. Any State which makes a declaration under articles 35, paragraph 1 and 37 to 40 may withdraw it at any time by a formal notification in writing addressed to the depositary. Such withdrawal takes effect on the first day of the month following the expiration of six months after the date of the receipt of the notification of the depositary.
>
> "[5. A declaration or its withdrawal does not affect the rights of parties arising from assignments made before the date on which the declaration or its withdrawal takes effect.]"

122. It was noted that paragraphs 1 to 4 reflected standard provisions usually included in international conventions. In response to a question, it was noted that a declaration made at the time of signature needed to be confirmed at the time of ratification, acceptance or approval, since before that time the declaration was not binding.

123. The substance of those paragraphs was adopted by the Working Group unchanged and referred to the drafting group. As to paragraph 5, on the understanding that the provision addressed similar issues as those addressed in draft articles 43, paragraph 3 and 44, paragraph 3 but was more complex than those provisions, the Working Group deferred discussion until it had completed its consideration of those provisions (see para. 134).

Article 42
Reservations

124. The text of draft article 42 as considered by the Working Group was as follows:

> "No reservations are permitted except those expressly authorized in this Convention."

125. It was noted that, in accordance with standard treaty law practice, draft article 42 was aimed at ensuring that no reservations other than those provided in draft articles 37 to 39 would be made by Contracting States.

126. The suggestion was made that the wording "except those expressly authorized in this Convention" could be deleted or draft article 42 should be recast to refer to declarations. In support of that suggestion, doubt was expressed as to whether the draft convention provided for any reservations. It was also observed that equating declarations with reservations might

inadvertently result in the application of reservation-related provisions of treaty law, including provisions on reciprocity. Doubt was expressed as to the appropriateness of those suggestions. After discussion, the Working Group agreed that the issue could not be resolved without prior consultation and left the matter to the Commission.

Article 43
Entry into force

127. The text of draft article 43 as considered by the Working Group was as follows:

> "1. This Convention enters into force on the first day of the month following the expiration of six months from the date of the deposit of the fifth instrument of ratification, acceptance, approval or accession.
>
> "2. For each State which becomes a Contracting State to this Convention after the date of the deposit of the fifth instrument of ratification, acceptance, approval or accession, this Convention enters into force on the first day of the month following the expiration of six months after the date of the deposit of the appropriate instrument on behalf of that State.
>
> "[3. This Convention applies only to assignments made on or after the date when the Convention enters into force in respect of the Contracting State referred to in article 1, paragraph 1.]"

128. It was stated that paragraph 3, which appeared within square brackets, should refer to which party would need to be located in the State making a declaration, to the relevant time when the relevant party should be located in a Contracting State and to priorities between assignments made before and after the entry into force of the draft convention. Language along the following lines was proposed:

> "This Convention applies only to assignments for which the contract of assignment is concluded on or after the date when this Convention enters into force in respect of the Contracting State referred to in article 1, subparagraph 1 (a), provided that the provisions of this Convention that deal with the rights and obligations of the debtor apply only to original contracts concluded on or after the date when the Convention enters into force with respect to the Contracting State referred to in article 1, paragraph 3."

129. General support was expressed in favour of the policy underlying the proposal. As a matter of drafting, it was suggested that reference should be made to assignments since the draft convention could not apply to original contracts. Support was expressed for that suggestion on the understanding that it should not affect debtors in original contracts concluded before the draft convention entered into force.

130. It was recalled that draft article 24, subparagraph (a) (i) addressed priority conflicts between convention and non-convention assignees in the case where a domestic assignment of domestic receivables was involved. In that connection, the view was expressed that draft article 43 should also address priority conflicts with respect to an assignment made before the draft convention entered into force and an assignment made after the draft convention entered into force. As a matter of policy, it was suggested that priority should be given to the assignment made before the draft convention entered into force. In support, it was pointed out that the rights of parties relying on receivables assigned before the draft convention entered into force should not be frustrated. It was also said that the rights of those parties should be preferred since such parties could not predict that the draft convention would enter into force, while parties to an assignment made after the draft

convention entered into force could expect that the receivables might have been assigned before the draft convention entered into force. Language along the following lines was proposed:

> "If there is one assignment before the entry into force and another after entry into force of this Convention, the earlier assignee has priority over the later assignee, if, under the law that would determine priority in the absence of this Convention, the earlier assignee had priority."

131. Subject to the changes mentioned in paragraphs 128 and 130 above, the Working Group adopted the substance of draft article 43, decided that the brackets around paragraph 3 should be deleted and referred the draft article to the drafting group.

Article 44
Denunciation

132. The text of draft article 44 as considered by the Working Group was as follows:

> "1. A Contracting State may denounce this Convention at any time by means of a notification in writing addressed to the depositary.
>
> "2. The denunciation takes effect on the first day of the month following the expiration of one year after the notification is received by the depositary. Where a longer period is specified in the notification, the denunciation takes effect upon the expiration of such longer period after the notification is received by the depositary.
>
> "[3. The Convention remains applicable to assignments made before the date on which the denunciation takes effect.]"

133. The suggestion was made that paragraph 3, which appeared within square brackets, should be aligned with draft article 43, paragraph 3, as revised (see paras. 128 and 130) in order to address the questions of which party needed to be located in the State making a declaration and at what time, and the question of priority as between an assignment made before denunciation took effect and an assignment made after denunciation took effect. Subject to that change, the Working Group adopted the substance of draft article 44, decided that the brackets around paragraph 3 should be deleted and referred the draft article to the drafting group.

Draft article 41, paragraph 5

134. Recalling its decision to defer discussion of draft article 41, paragraph 5 until it had considered draft articles 43, paragraph 3 and 44, paragraph 3 (see para. 123), the Working Group resumed its discussion on draft article 41, paragraph 5 and decided that it should be aligned with draft articles 43, paragraph 3 and 44, paragraph 3 (see paras. 128, 130 and 133). Subject to that change, the Working Group adopted the substance of draft article 41, paragraph 5, decided that the square brackets around that provision should be deleted and referred it to the drafting group.

Article X
Revision and amendment

135. The text of draft article X as considered by the Working Group was as follows:

> "1. At the request of not less than one third of the Contracting States to this Convention, the depositary shall convene a conference of the Contracting States for revising or amending it.
>
> "2. Any instrument of ratification, acceptance, approval or accession deposited after the entry into force of an amendment to this Convention is deemed to apply to the Convention as amended."

136. Noting that draft article X was a standard provision found in other UNCITRAL texts (see, e.g., article 32 of the United Nations Convention on the Carriage of Goods by Sea, 1978 (Hamburg Rules)), the Working Group adopted the substance of draft article X unchanged and referred it to the drafting group.

III. Annex to the draft convention

General remarks

137. It was noted that, in view of the possibility that the law of the assignor's location might not have any or, at least, modern priority rules, the annex set forth two sets of alternative priority rules for States to choose from. It was also noted that, while the rules set forth in the annex were intended to serve as a model for national legislation, they were not designed to form a complete model law and that, therefore, States would need to prepare additional provisions.

138. The concern was expressed that the annex could not achieve its objectives and might even do harm. It was stated that, in order to provide useful guidance, the annex should contain a more detailed set of rules. It was also observed that, in providing so many alternatives, the annex could be confusing to States. In order to address that concern, the suggestion was made that the annex should be deleted or referred to the Commission with the question whether it should be retained, in particular in view of the possible future work of the Commission in the field of secured credit law. Both suggestions were strongly objected to. It was widely felt that, in setting forth two alternative priority systems for States to choose from, the annex provided useful guidance to States that wished to modernize their priority systems. In particular, the reference to a registration-based priority system was said to have an educational and practical value that should be preserved for the draft convention to be really useful to States.

139. In that connection, the suggestion was made that, in order to enhance the educational value of the draft convention and to avoid sending conflicting signals, the reference in the annex to the priority system based on the time of the contract of assignment should be deleted. That suggestion was strongly objected to. It was widely felt that, in view of the lack of agreement in the Working Group as to which was the most appropriate priority system, the annex should reflect all the alternatives in a balanced way. In that connection, it was observed, however, that in leaving aside the priority system based on the time of notification of the debtor, the annex was not fully consistent with that policy. It was, therefore, suggested that reference should be made in the annex to that priority system as well. There was sufficient support for that suggestion. After discussion, the Working Group

decided that the annex should be retained and revised to include a reference to the priority system based on the time of notification of the debtor as well.

140. The Working Group next considered the scope of the provisions of the annex. It was stated that, under draft article 40, the provisions of the annex chosen by the State of the assignor's location would apply as the law of the assignor's location in accordance with draft article 24. As a result, it was observed, the provisions of the annex should apply with respect to priority conflicts covered by draft article 24. In particular, it was explained that the terms "assignor", "assignee", "creditors of the assignor", "insolvency administrator", "assignment" and "receivable", as used in the annex, should be understood as having the meaning given to them in the draft convention. It was also explained that the priority rules in the annex should cover the characteristics of the right of an assignee and conflicts of priority in receivables and proceeds to the extent those matters were covered in draft article 24. After discussion, the Working Group agreed that the priority provisions of the annex should be aligned with draft article 24.

141. In order to further enhance the acceptability of the registration-based priority provisions of the annex, the Working Group agreed that States opting into those provisions of the annex by way of a declaration made in accordance with draft article 40 could list in the declaration types of conflicts they did not wish to subject to a registration-based priority regime (e.g. conflicts between assignees and the assignor's suppliers). The matter was referred to the drafting group subject to further consideration of draft article 40.

142. Noting the interplay between draft article 40, which dealt with the options offered to States with respect to the annex, and the provisions of the annex, the Working Group proceeded to consider those provisions, on the understanding that it might need to revisit them once it had finalized draft article 40.[12]

Section I
Priority rules based on registration

Article 1
Priority among several assignees

143. The text of draft article 1 of the annex as considered by the Working Group was as follows:

> "As between assignees of the same receivable from the same assignor, priority is determined by the order in which data about the assignment are registered under section II of this annex, regardless of the time of transfer of the receivable. If no such data are registered, priority is determined on the basis of the time of the assignment."

144. A question was raised as to the usefulness of the rule contained in the second sentence of draft article 1 of the annex. In response, it was stated that registration was non-mandatory and conferred priority only to the extent that a right was validly created. As a result, if parties had chosen not to register and a conflict had arisen with respect to the rights of those parties, the rule contained in the second sentence of draft article 1 of the annex would be necessary to address that conflict. It was also observed that that result could not be obtained in the absence of that rule, in particular since a State opting into section I could not opt into section III as well which contained a time-of-assignment priority rule.

[12] However, the Working Group did not revisit the provisions of the annex.

145. The suggestion was made that in the second sentence of draft article 1 of the annex reference should be made to the time of "the contract of assignment" rather than to "the assignment". There was support for that suggestion, since a priority rule referring to the time of the actual transfer would be difficult to apply in the case of bulk assignments of future receivables. Subject to that change and the changes referred to in paragraph 140 above, the Working Group adopted the substance of draft article 1 of the annex and referred it to the drafting group.

Article 2
Priority between the assignee and the insolvency administrator or creditors of the assignor

146. The text of draft article 2 of the annex as considered by the Working Group was as follows:

> "[Subject to article 25 of this Convention,] an assignee has priority over an insolvency administrator and creditors of the assignor, including creditors attaching the assigned receivables, if the receivables were assigned, and data about the assignment were registered under section II of this annex, before the commencement of the insolvency proceeding or attachment."

147. On the understanding that draft article 2 of the annex would apply by way of draft article 24 of the draft convention, which was subject to draft articles 25 and 26, it was agreed that the bracketed language could be deleted. It was also agreed that, in order to sufficiently address conflicts involving attaching creditors outside an insolvency proceeding, draft article 2 of the annex should refer to "attachment or other judicial act or event". Furthermore, it was agreed that creditors of the assignor with a right in a tangible asset that extended by operation of law in the receivables flowing from the sale or lease of that asset should be considered as assignees and not as creditors of the assignor. As a result, conflicts involving such parties should be subject to draft article 1 rather than to draft article 2 of the annex. Recalling its decision to treat such parties as creditors of the assignor in the context of draft article 24 (see paras. 47 and 54), the Working Group decided that draft article 24 should be revised to reflect the understanding of the Working Group that such parties should be treated as assignees.

148. In response to a question, it was confirmed that priority conflicts between domestic and foreign assignees of domestic receivables would be addressed by draft article 2 of the annex, since draft article 24 referred it to the law of the assignor's location and, after a State had opted into section I of the annex, draft article 2 would be the relevant rule of the law of the assignor's location. It was also confirmed that, in view of the fact that conflicts with a domestic assignee of a domestic receivable were covered by draft article 2, such assignees should be able to register in order to obtain priority.

149. Subject to the changes referred to in paragraph 147 above, the Working Group adopted draft article 2 of the annex and referred it to the drafting group.

Section II
Registration

Article 3
Establishment of a registration system

150. The text of draft article 3 of the annex as considered by the Working Group was as follows:

"A registration system will be established for the registration of data about assignments under this Convention and the regulations to be promulgated by the registrar and the supervising authority. The regulations will prescribe in detail the manner in which the registration system will operate, as well as the procedure for resolving disputes relating to that operation."

151. Recalling its earlier discussion of the question whether a domestic assignee of domestic receivables should be able to register and obtain priority (see para. 148), the Working Group agreed that language along the following lines should be substituted for the words "under this Convention and": "..., even if the assignment is not an international assignment and the receivable is not an international receivable, pursuant to".

152. It was noted that, while significant responsibility was left to the supervising authority and the registrar, the draft convention did not include any provisions as to the manner in which they might be appointed. Differing views were expressed as to whether the draft convention should identify the registrar and the supervising authority or include a mechanism for their selection. One view was that, at the present stage, it would be very difficult to identify the registrar or the supervising authority. It was also observed that locking in a particular procedure for the selection of the registrar and the supervising authority or establishing a high threshold as to that procedure would be inappropriate, since such an approach could inadvertently result in delaying the initiation of the registration process.

153. Another view was that it was necessary for the draft convention to establish a mechanism for the registration rules of the annex to come into force. It was stated that, in the absence of such a mechanism in the draft convention, the annex might never come to apply. It was suggested that the link between the draft convention and the registration system could be established by way of a provision along the lines of article X that would allow Contracting States to appoint a supervising authority and a registrar. Noting the different views, the Working Group deferred a final decision on draft article 3 of the annex to a later time so as to allow time for consultations (see para. 174).

Article 4
Registration

154. The text of draft article 4 of the annex as considered by the Working Group was as follows:

"1. Any person authorized by the regulations may register data with regard to an assignment at the registry in accordance with this Convention and the registration regulations. The data registered shall be identification of the assignor and the assignee, as provided in the regulations, and a brief description of the assigned receivables.

"2. A single registration may cover:

"(a) The assignment by the assignor to the assignee of more than one receivable;

"(b) An assignment not yet made;

"(c) The assignment of receivables not existing at the time of registration.

"3. Registration, or its amendment, is effective from the time that the data referred to in paragraph 1 are available to searchers. The registering party may specify, from options provided in the regulations, a period of effectiveness for the registration. In the absence of such a specification, a registration is effective for a period of five years. Regulations will specify the manner in which registration may be renewed, amended or discharged and, consistent with the annex, such other matters are necessary for the operation of the registration system.

"4. Any defect, irregularity, omission or error with regard to the identification of the assignor that would result in data registered not being found upon a search based on the identification of the assignor renders the registration ineffective."

Paragraph 1

155. The suggestion was made that the words "authorized by the regulations" should be deleted. It was stated that those words were redundant, since reference was made in the same provision to the fact that the registration was to be made "in accordance with ... the registration regulations". There was sufficient support for that suggestion. The suggestion was also made that paragraph 1 should clarify that the description of the receivable did not need to be specific. The view was expressed, however, that the regulations could confirm the sufficiency of a non-specific description of the receivables. There was no objection to that view as long as it was understood that the regulations should deal with operational issues and not add any additional substantive requirements, such as specificity, for a registration to be effective. In response to a question, it was stated that, if the registry had the capability of identifying the assignor and the assignee by number, in particular in order to avoid language problems, it should be allowed to do so. Subject to the change referred to above, the Working Group adopted the substance of paragraph 1 and referred it to the drafting group.

Paragraph 2

156. In order to ensure that subparagraph (a) properly implemented the policy that a single registration would be sufficient, it was suggested that it should be supplemented by a reference to one or more assignments of present or future receivables. There was broad support for that suggestion.

157. The concern was expressed that subparagraph (a) might be going too far in allowing the registration even if an assignment was not made. In order to address that concern, the suggestion was made that subparagraph (a) should be deleted or its scope should be limited. That suggestion was objected to. It was stated that, for the assignee to be able to release funds, there was a need to ensure that registration could be effected as soon as possible ("pre-registration"). It was also observed that the concern expressed could be addressed if a reference were included in a separate provision as to the possibility for pre-registration and as to the way in which such pre-registration could be discharged if the assignment did not take place. Language along the following lines was proposed: "A registration may be made in advance of the assignment. Regulations will establish the procedure for discharge of a registration in the event that no assignment is actually made". Support was expressed for that suggestion. Subject to that change and the change referred to in paragraph 156 above, the Working Group adopted the substance of paragraph 2 and referred it to the drafting group.

Paragraph 3

158. Doubt was expressed as to the efficiency of a system in which registration became effective only as of the time data became available to searchers. It was stated that delays in processing applications would be to the detriment of registering parties. In response, it was stated that the system envisaged would be fully or partly electronic and that, as a result, registrations would be processed in a timely fashion. The suggestion was also made that the manner in which registrations could be "entered" into the record should also be left to regulations. No objection was voiced to that suggestion as long as it was understood that the regulations could not create additional hurdles for a registration to be effective. It was agreed that that result could be achieved if the words "consistent with this annex" were added at the beginning of the last sentence of paragraph 3, in particular if that sentence were to be reflected in a separate paragraph. Subject to that change, the Working Group adopted the substance of paragraph 3 and referred it to the drafting group.

Paragraph 4

159. It was suggested that the second reference to "identification" should be to "proper identification". It was stated that, only upon proper identification of the assignor by a searcher, it could be determined whether an error had occurred as to the identification of the assignor. There was sufficient support for that suggestion. Subject to that change, the Working Group adopted the substance of paragraph 4 and referred it to the drafting group.

Article 5
Registry searches

160. The text of draft article 5 of the annex as considered by the Working Group was as follows:

> "1. Any person may search the records of the registry according to identification of the assignor, as provided in the regulations, and obtain a search result in writing.
>
> "2. A search result in writing that purports to be issued from the registry is admissible as evidence and is, in the absence of evidence to the contrary, proof of the data to which the search relates, including:
>
> "(a) the date and time of registration; and
>
> "(b) the order of registration."

161. It was agreed that paragraph 2 (b) could be deleted, since the date and time was sufficient to determine the order of registration. The view was expressed that registration might not be that useful if it only provided proof of the date and time (hour) of registration. In response, it was observed that, unlike title registries, notice-filing registries such as the one envisaged in the annex served to put interested parties on notice that a right might exist and allow them to obtain additional information. It was also pointed out that, in various jurisdictions with a notice-filing system, parties with a legitimate interest had the right to obtain a copy of the assignment document from the assignor, a point that might usefully be made in the commentary. Subject to the deletion of paragraph 2 (b), the Working Group adopted draft article 5 of the annex and referred it to the drafting group.

Section III
Priority rules based on the time of the contract of assignment

Article 6
Priority among several assignees

162. The text of draft article 6 of the annex as considered by the Working Group was as follows:

> "As between assignees of the same receivable from the same assignor, the right to the receivable is acquired by the assignee whose contract of assignment is of the earliest date."

163. Support was expressed in favour of the rule contained in draft article 6 of the annex. However, doubt was expressed as to whether draft article 6 set a real priority rule since it provided that the first assignee "acquired" the receivables, assuming that any later assignee of the same receivables obtained no right and, therefore, no conflict of priority arose. The Working Group noted that a specific proposal as to the reformulation of draft article 6 of the annex would be submitted well in advance of the next Commission session and referred draft article 6 of the annex to the Commission. It was agreed, however, that draft article 6 of the annex should be aligned with draft article 24 of the draft convention.

Article 7
Priority between the assignee and the insolvency administrator or creditors of the assignor

164. The text of draft article 7 of the annex as considered by the Working Group was as follows:

> "[Subject to article 25 of this Convention,] an assignee has priority over an insolvency administrator and creditors of the assignor, including creditors attaching the assigned receivables, if the receivables were assigned before the commencement of the insolvency proceeding or attachment."

165. Recalling its decision to delete the words "subject to article 25 of this Convention" from draft article 2 of the annex (see para. 147), the Working Group agreed that those words could also be deleted from draft article 7 of the annex. The Working Group also agreed that draft article 7 of the annex should be aligned with draft article 24 of the draft convention. The Working Group noted that a specific proposal as to the reformulation of draft article 7 of the annex would be submitted well in advance of the Commission session and referred draft article 7 to the Commission.

Additional priority rules

166. Recalling its decision to reflect in the annex all the possible alternative priority rules for States to choose from (see para. 139), the Working Group decided that a new section IV should be added to the annex to reflect a system in which priority would be determined on the basis of the time of notification of the debtor. The discussion focused on a proposal that read as follows:

"Section IV: Priority rules based on the time of notification of the contract of assignment

"Article 8. Priority among several assignees

As between assignees of the same receivable from the same assignor, the priority of the right of an assignee in the assigned receivable is determined by the order in which effective notice in writing of each contract of assignment is given to the debtor.

"Article 9. Priority between the assignee and the insolvency administrator or creditors of the assignor

An assignee has priority over an insolvency administrator and creditors of the assignor, including creditors attaching the assigned receivables, if the receivables were assigned before the commencement of the insolvency proceeding or attachment or other judicial act or event."

167. It was stated that the proposal was intended to introduce a set of optional priority rules based on the time of the notification of the debtor. As to draft article 8, it was explained that the reference to "effective notification" meant effectiveness under the law of the debtor's location. However, it was noted that notification was one of the matters addressed in the draft convention and was not referred to the rules in the annex as the law of the assignor's location applicable under draft article 24. It was also noted that certainty as to the rights of the assignee as against the debtor would be achieved under the draft convention, since for the debtor-related provisions to apply the debtor needed to be in a Contracting State or the law governing the original contract had to be the law of a Contracting State.

168. While support was expressed for the proposed text, the concern was expressed that draft article 9 was not a pure time-of-notification rule. In view of the fact that the priority conflict addressed in draft article 9 was addressed differently in countries following a debtor-notification priority system, it was agreed that draft article 40 should make it possible for States to opt into draft articles 7 and 8. After discussion, the Working Group decided that the proposed text should be included in the annex for the continuation of the discussion and referred the matter to the drafting group.

Article 40
Application of the annex

169. Recalling its decision to defer discussion of draft article 40 until it had considered the annex (see para. 120), the Working Group resumed its discussion on draft article 40. It was agreed that the second variant should be retained outside square brackets. It was also agreed that the bracketed language in paragraph 1 (b) should be deleted and that, in order to allow a signatory State to make a declaration, reference should be made to a "State" rather than to a "Contracting State". Furthermore, it was agreed that draft article 40 should allow a State to exclude certain types of assignments or the assignment of certain types of receivables from the priority provisions of the annex that State chose to opt into. Subject to those changes and the change referred to in paragraph 168 above, the Working Group adopted draft article 40 and referred it to the drafting group.

V. Report of the drafting group

170. The Working Group requested a drafting group established by the Secretariat to review draft articles 1, paragraphs 4 and 5, 4, paragraph 4, 18 to 44 of the draft convention, as well as draft articles 1 to 7 of the annex to the draft convention, with a view to reflecting the deliberations of the Working Group at the present session and to ensuring consistency between the various language versions.

171. At the close of its deliberations, the Working Group considered the report of the drafting group and, with the exception of the bracketed language, adopted draft articles 1, paragraphs 4 and 5, 4, paragraph 4, 18 to 46 of the draft convention and draft articles 1 to 9 of the annex to the draft convention, as revised by the drafting group. The consolidated text of the draft convention, as adopted by the Working Group, is reproduced in the annex to the present report.

172. With regard to draft article 18, it was agreed that reference should be made to "notification or payment instruction" in order to avoid giving the impression that a notification had to include a payment instruction. As to draft article 19, paragraph 6, the view was expressed that the current text might result in impairing the effectiveness of partial assignments, as it left to the debtor the choice of paying either in accordance with the notification or in accordance with the original contract. It was recalled that the Working Group had decided that payment in the case of a partial assignment should be left to the discretion of the debtor. Accordingly, it was agreed that draft article 19, paragraph 6 adequately reflected the policy decision of the Working Group (see paras. 18-20). The view was expressed that the second sentence of draft article 19, paragraph 6 was redundant, since it merely restated the rule set forth in the first sentence of that paragraph. In response, it was noted that retention of that second sentence was necessary, since the first part of the provision did not make it clear to what extent the debtor paying in accordance with the notification would be discharged. With respect to draft article 19, paragraph 7, it was agreed that it should be revised to refer to proof of "the assignment from the initial assignor to the initial assignee including any intermediate assignment".

173. Concerning draft article 20, it was agreed that the word "or" in paragraph 1 should be replaced by the word "and". With respect to draft article 21, it was proposed to delete the words "in the State in which the debtor is located" and to insert the word "applicable" before the word "law". It was stated that that change would ensure debtor protection, whatever the law applicable was. That proposal was objected to on the ground that it would result in a substantive change as to the policy underlying the provision. With respect to draft article 24, paragraph 2 (b), it was agreed that, in order to avoid the implication that only security assignments were meant, it should be revised to read: "whether or not". As to draft article 24, paragraph 3 (b), it was agreed that, following a decision of the Working Group that such parties should be treated as assignees (see para. 147), it was agreed that it should be moved to paragraph 3 (a). While some concern was expressed with regard to the title of chapter V ("Other" conflict of laws rules), the Working Group agreed that the title clearly reflected the fact that the draft convention contained conflict-of-laws rules outside chapter V and, in order to better reflect that fact, decided that the word "autonomous" should be substituted for the word "other". It was agreed that the reference to creditors of the assignor that had a right in other property, contained in draft article 5 (m) (ii), should be moved to draft article 5 (m) (i) and that the word "person" should be substituted for the word "creditor". It was also agreed that in draft article 37, paragraph 2 the sentence starting with the word "provided" should be deleted and that paragraph 3 should be merged with paragraph 2.

VI. Future work

174. Further to consultations, an *ad hoc* group suggested that a new provision on form should be introduced in chapter V. It was stated that the Commission might wish to ensure that the proposed provision would be in line with draft article 8. It was also suggested that the Commission might wish to introduce a provision in the annex that would allow for the registry to be established as quickly as possible, providing for designation of a supervising authority, for an interim registrar and for interim regulations. It was also pointed out that the process to achieve that result should be an inclusive one, possibly convening a group of interested States at the request of one third of the signatory States. In addition, it was said that it would be useful to provide for future amendments and review of the registration system by a group of Contracting States to be convened at the request of one third of Contracting and signatory States. The Working Group noted an invitation addressed to all interested delegations to participate in consultations on that matter so that an adequate text would be presented well in advance of the next Commission session. Moreover, it was stated that the Commission might wish to consider additional practices with the question of whether they should be excluded from the scope of the draft convention. It was agreed that any such suggestion should be submitted well in advance of the Commission session for delegations to have sufficient time to consult and be prepared to decide on that matter in a timely manner at the next Commission session.

175. Having completed its work, the Working Group adopted the draft convention as a whole, with the exception of the bracketed language, and submitted it to the Commission for final review and adoption at its next session, to be held at Vienna from 25 June to 13 July 2001. It was noted that the text of the draft convention, as adopted by the Working Group, would be distributed to all States and interested international organizations for comments, and that the Secretariat would prepare an analytical compilation of those comments for distribution in advance of the Commission session. It was also noted that the Secretariat would prepare and distribute a revised version of the commentary to the draft convention. It was expected that the compilation of comments and the commentary would assist delegates at the Commission session in their deliberations and allow the Commission to finalize and adopt the draft convention.

Annex I

Draft convention on assignment of receivables in international trade

Preamble

The Contracting States,

Reaffirming their conviction that international trade on the basis of equality and mutual benefit is an important element in the promotion of friendly relations among States,

Considering that problems created by uncertainties as to the content and the choice of legal regime applicable to the assignment of receivables constitute an obstacle to international trade,

Desiring to establish principles and to adopt rules relating to the assignment of receivables that would create certainty and transparency and promote the modernization of the law relating to assignments of receivables, while protecting existing assignment practices and facilitating the development of new practices,

Desiring also to ensure adequate protection of the interests of debtors in assignments of receivables,

Being of the opinion that the adoption of uniform rules governing the assignment of receivables would promote the availability of capital and credit at more affordable rates and thus facilitate the development of international trade,

Have agreed as follows:

Chapter I
Scope of application

Article 1
Scope of application

1. This Convention applies to:

(a) Assignments of international receivables and to international assignments of receivables as defined in this chapter, if, at the time of the conclusion of the contract of assignment, the assignor is located in a Contracting State; and

(b) Subsequent assignments, provided that any prior assignment is governed by this Convention.

2. This Convention applies to subsequent assignments that satisfy the criteria set forth in paragraph 1 (a) of this article, even if it did not apply to any prior assignment of the same receivable.

3. This Convention does not affect the rights and obligations of the debtor unless, at the time of the conclusion of the original contract, the debtor is located in a

Contracting State or the law governing the original contract is the law of a Contracting State.

4. The provisions of chapter V apply to assignments of international receivables and to international assignments of receivables as defined in this chapter independently of paragraphs 1 and 2 of this article. However, those provisions do not apply if a State makes a declaration under article 39.

5. The provisions of the annex to this Convention apply as provided in article 42.

Article 2
Assignment of receivables

For the purposes of this Convention:

(a) "Assignment" means the transfer by agreement from one person ("assignor") to another person ("assignee") of all or part of or an undivided interest in the assignor's contractual right to payment of a monetary sum ("receivable") from a third person ("the debtor"). The creation of rights in receivables as security for indebtedness or other obligation is deemed to be a transfer;

(b) In the case of an assignment by the initial or any other assignee ("subsequent assignment"), the person who makes that assignment is the assignor and the person to whom that assignment is made is the assignee.

Article 3
Internationality

A receivable is international if, at the time of the conclusion of the original contract, the assignor and the debtor are located in different States. An assignment is international if, at the time of the conclusion of the contract of assignment, the assignor and the assignee are located in different States.

Article 4
Exclusions

1. This Convention does not apply to assignments made:

(a) Made to an individual for his or her personal, family or household purposes;

(b) Made by the delivery of a negotiable instrument, with an endorsement, if necessary;

(c) Made as part of the sale or change in the ownership or legal status of the business out of which the assigned receivables arose.

2. This Convention does not apply to assignments of receivables arising under or from:

(a) Transactions on a regulated exchange;

(b) Financial contracts governed by netting agreements, except a receivable owed on the termination of all outstanding transactions;

(c) Bank deposits;

(d) Inter-bank payment systems, inter-bank payment agreements or investment securities settlement systems;

(e) A letter of credit or independent guarantee;

(f) The sale, loan or holding of or agreement to repurchase investment securities.

3. This Convention does not:

(a) Affect whether a property right in real estate confers a right in a receivable related to that real estate or determine the priority of such a right in the receivable with respect to the competing right of an assignee of the receivable; or

(b) Make lawful the acquisition of property rights in real estate not permitted under the law of the State where the real estate is located.

[4. This Convention does not apply to assignments listed in a declaration made under article 41 by the State in which the assignor is located, or with respect to the provisions of this Convention that deal with the rights and obligations of the debtor, by the State in which the debtor is located or the State whose law is the law governing the original contract.]

Chapter II
General provisions

Article 5
Definitions and rules of interpretation

For the purposes of this Convention:

(a) "Original contract" means the contract between the assignor and the debtor from which the assigned receivable arises;

(b) "Existing receivable" means a receivable that arises upon or before the conclusion of the contract of assignment and "future receivable" means a receivable that arises after the conclusion of the contract of assignment;

(c) "Writing" means any form of information that is accessible so as to be usable for subsequent reference. Where this Convention requires a writing to be signed, that requirement is met if, by generally accepted means or a procedure agreed to by the person whose signature is required, the writing identifies that person and indicates that person's approval of the information contained in the writing;

(d) "Notification of the assignment" means a communication in writing that reasonably identifies the assigned receivables and the assignee;

(e) "Insolvency administrator" means a person or body, including one appointed on an interim basis, authorized in an insolvency proceeding to administer the reorganization or liquidation of the assignor's assets or affairs;

(f) "Insolvency proceeding" means a collective judicial or administrative

proceeding, including an interim proceeding, in which the assets and affairs of the assignor are subject to control or supervision by a court or other competent authority for the purpose of reorganization or liquidation;

(g) "Priority" means the right of a party in preference to another party;

(h) A person is located in the State in which it has its place of business. If the assignor or the assignee has a place of business in more than one State, the place of business is that place where the central administration of the assignor or the assignee is exercised. If the debtor has a place of business in more than one State, the place of business is that which has the closest relationship to the original contract. If a person does not have a place of business, reference is to be made to the habitual residence of that person;

(i) "Law" means the law in force in a State other than its rules of private international law;

(j) "Proceeds" means whatever is received in respect of an assigned receivable, whether in total or partial payment or other satisfaction of the receivable. The term includes whatever is received in respect of proceeds. The term does not include returned goods;

(k) "Financial contract" means any spot, forward, future, option or swap transaction involving interest rates, commodities, currencies, equities, bonds, indices or any other financial instrument, any repurchase or securities lending transaction and any other transaction similar to any transaction referred to above entered into in financial markets and any combination of the transactions mentioned above;

(l) "Netting agreement" means an agreement that provides for one or more of the following:

(i) The net settlement of payments due in the same currency on the same date whether by novation or otherwise;

(ii) Upon the insolvency or other default by a party, the termination of all outstanding transactions at their replacement or fair market values, conversion of such sums into a single currency and netting into a single payment by one party to the other; or

(iii) The set-off of amounts calculated as set forth in subparagraph (l) (ii) of this article under two or more netting agreements;

(m) "Competing claimant" means:

(i) Another assignee of the same receivable from the same assignor, including a person who, by operation of law, claims a right in the assigned receivable as a result of its right in other property of the assignor, even if that receivable is not an international receivable and the assignment to that assignee is not an international assignment;

(ii) A creditor of the assignor; or

(iii) The insolvency administrator.

Article 6
Party autonomy

Subject to article 21, the assignor, the assignee and the debtor may derogate from or vary by agreement provisions of this Convention relating to their respective rights and

obligations. Such an agreement does not affect the rights of any person who is not a party to the agreement.

Article 7
Principles of interpretation

1. In the interpretation of this Convention, regard is to be had to its object and purpose as set forth in the preamble, to its international character and to the need to promote uniformity in its application and the observance of good faith in international trade.

2. Questions concerning matters governed by this Convention that are not expressly settled in it are to be settled in conformity with the general principles on which it is based or, in the absence of such principles, in conformity with the law applicable by virtue of the rules of private international law.

Chapter III
Effects of assignment

Article 8
Form of assignment

An assignment is valid as to form if it meets the form requirements, if any form requirements exist, of either the law of the State in which the assignor is located or any other law applicable by virtue of the rules of private international law.

Article 9
Effectiveness of assignments, bulk assignments, assignments of future receivables and partial assignments

1. An assignment of one or more existing or future receivables and parts of or undivided interests in receivables is effective as between the assignor and the assignee, as well as against the debtor, whether the receivables are described:

(a) Individually as receivables to which the assignment relates; or

(b) In any other manner, provided that they can, at the time of the assignment or, in the case of future receivables, at the time of the conclusion of the original contract, be identified as receivables to which the assignment relates.

2. Unless otherwise agreed, an assignment of one or more future receivables is effective without a new act of transfer being required to assign each receivable.

3. Except as provided in paragraph 1 of this article and in articles 11 and 12, paragraphs 2 and 3, this Convention does not affect any limitations on assignments arising from law.

4. An assignment of a receivable is not ineffective against, and the right of an assignee may not be denied priority with respect to the right of, a competing claimant, solely because law other than this Convention does not generally recognize an assignment described in paragraph 1 of this article.

Article 10
Time of assignment

Without prejudice to the right of a competing claimant, an existing receivable is transferred and a future receivable is deemed to be transferred at the time of the conclusion of the contract of assignment, unless the assignor and the assignee have specified a later time.

Article 11
Contractual limitations on assignments

1. An assignment of a receivable is effective notwithstanding any agreement between the initial or any subsequent assignor and the debtor or any subsequent assignee limiting in any way the assignor's right to assign its receivables.

2. Nothing in this article affects any obligation or liability of the assignor for breach of such an agreement, but the other party to such agreement may not avoid the original contract or the assignment contract on the sole ground of that breach. A person who is not party to such an agreement is not liable on the sole ground that it had knowledge of the agreement.

3. This article applies only to assignments of receivables:

(a) Arising from an original contract for the supply or lease of [goods,] construction or services other than financial services or for the sale or lease of real estate;

(b) Arising from an original contract for the sale, lease or licence of industrial or other intellectual property or other information;

(c) Representing the payment obligation for a credit card transaction; or

(d) Owed to the assignor upon net settlement of payments due pursuant to a netting agreement involving more than two parties.

Article 12
Transfer of security rights

1. A personal or property right securing payment of the assigned receivable is transferred to the assignee without a new act of transfer. If such a right, under the law governing it, is transferable only with a new act of transfer, the assignor is obliged to transfer such right and any proceeds to the assignee.

2. A right securing payment of the assigned receivable is transferred under paragraph 1 of this article notwithstanding any agreement between the assignor and the debtor or other person granting that right, limiting in any way the assignor's right to assign the receivable or the right securing payment of the assigned receivable.

3. Nothing in this article affects any obligation or liability of the assignor for breach of any agreement under paragraph 2 of this article, but the other party to that agreement may not avoid the original contract or the assignment contract on the sole ground of that breach. A person who is not a party to such an agreement is not liable on the sole ground that it had knowledge of the agreement.

4. Paragraphs 2 and 3 of this article apply only to assignments of receivables:

(a) Arising from an original contract for the supply or lease of [goods,] construction or services other than financial services or for the sale or lease of real estate;

(b) Arising from an original contract for the sale, lease or licence of industrial or other intellectual property or other information;

(c) Representing the payment obligation for a credit card transaction; or

(d) Owed to the assignor upon net settlement of payments due pursuant to a netting agreement involving more than two parties.

5. The transfer of a possessory property right under paragraph 1 of this article does not affect any obligations of the assignor to the debtor or the person granting the property right with respect to the property transferred existing under the law governing that property right.

6. Paragraph 1 of this article does not affect any requirement under rules of law other than this Convention relating to the form or registration of the transfer of any rights securing payment of the assigned receivable.

Chapter IV
Rights, obligations and defences

Section I
Assignor and assignee

Article 13
Rights and obligations of the assignor and the assignee

1. The mutual rights and obligations of the assignor and the assignee arising from their agreement are determined by the terms and conditions set forth in that agreement, including any rules or general conditions referred to therein.

2. The assignor and the assignee are bound by any usage to which they have agreed and, unless otherwise agreed, by any practices they have established between themselves.

3. In an international assignment, the assignor and the assignee are considered, unless otherwise agreed, to have implicitly made applicable to the assignment a usage that in international trade is widely known to, and regularly observed by, parties to the particular type of assignment or the assignment of the particular category of receivables.

Article 14
Representations of the assignor

1. Unless otherwise agreed between the assignor and the assignee, the assignor represents at the time of the conclusion of the contract of assignment that:

(a) The assignor has the right to assign the receivable;

(b) The assignor has not previously assigned the receivable to another assignee; and

(c) The debtor does not and will not have any defences or rights of set-off.

2. Unless otherwise agreed between the assignor and the assignee, the assignor does not represent that the debtor has, or will have, the ability to pay.

Article 15
Right to notify the debtor

1. Unless otherwise agreed between the assignor and the assignee, the assignor or the assignee or both may send the debtor notification of the assignment and payment instructions, but after notification has been sent only the assignee may send such an instruction.

2. Notification of the assignment or payment instructions sent in breach of any agreement referred to in paragraph 1 of this article are not ineffective for the purposes of article 19 by reason of such breach. However, nothing in this article affects any obligation or liability of the party in breach of such an agreement for any damages arising as a result of the breach.

Article 16
Right to payment

1. As between the assignor and the assignee, unless otherwise agreed and whether or not notification of the assignment has been sent:

(a) If payment in respect of the assigned receivable is made to the assignee, the assignee is entitled to retain the proceeds and goods returned in respect of the assigned receivable;

(b) If payment in respect of the assigned receivable is made to the assignor, the assignee is entitled to payment of the proceeds and also to goods returned to the assignor in respect of the assigned receivable; and

(c) If payment in respect of the assigned receivable is made to another person over whom the assignee has priority, the assignee is entitled to payment of the proceeds and also to goods returned to such person in respect of the assigned receivable.

2. The assignee may not retain more than the value of its right in the receivable.

Section II
Debtor

Article 17
Principle of debtor protection

1. Except as otherwise provided in this Convention, an assignment does not, without the consent of the debtor, affect the rights and obligations of the debtor, including the payment terms contained in the original contract.

2. A payment instruction may change the person, address or account to which the debtor is required to make payment, but may not:

(a) Change the currency of payment specified in the original contract; or

(b) Change the State specified in the original contract in which payment is to be made to a State other than that in which the debtor is located.

Article 18
Notification of the debtor

1. Notification of the assignment or a payment instruction is effective when received by the debtor if it is in a language that is reasonably expected to inform the debtor about its contents. It is sufficient if notification of the assignment or a payment instruction is in the language of the original contract.

2. Notification of the assignment or a payment instruction may relate to receivables arising after notification.

3. Notification of a subsequent assignment constitutes notification of all prior assignments.

Article 19
Debtor's discharge by payment

1. Until the debtor receives notification of the assignment, the debtor is entitled to be discharged by paying in accordance with the original contract.

2. After the debtor receives notification of the assignment, subject to paragraphs 3 to 8 of this article, the debtor is discharged only by paying the assignee or, if otherwise instructed in the notification of the assignment or subsequently by the assignee in a writing received by the debtor, in accordance with such payment instruction.

3. If the debtor receives more than one payment instruction relating to a single assignment of the same receivable by the same assignor, the debtor is discharged by paying in accordance with the last payment instruction received from the assignee before payment.

4. If the debtor receives notification of more than one assignment of the same receivable made by the same assignor, the debtor is discharged by paying in accordance with the first notification received.

5. If the debtor receives notification of one or more subsequent assignments, the debtor is discharged by paying in accordance with the notification of the last of such subsequent assignments.

6. If the debtor receives notification of the assignment of a part of or an undivided interest in one or more receivables, the debtor is discharged by paying in accordance with the notification or in accordance with this article as if the debtor had not received the notification. If the debtor pays in accordance with the notification, the debtor is discharged only to the extent of the part or undivided interest paid.

7. If the debtor receives notification of the assignment from the assignee, the debtor is entitled to request the assignee to provide within a reasonable period of time adequate proof that the assignment from the initial assignor to the initial assignee and any intermediate assignment have been made and, unless the assignee does so, the debtor is discharged by paying in accordance with this article as if the notification from the assignee had not been received. Adequate proof of an assignment includes but is not limited to any writing emanating from the assignor and indicating that the assignment has taken place.

8. This article does not affect any other ground on which payment by the debtor

to the person entitled to payment, to a competent judicial or other authority, or to a public deposit fund discharges the debtor.

Article 20
Defences and rights of set-off of the debtor

1. In a claim by the assignee against the debtor for payment of the assigned receivables, the debtor may raise against the assignee all defences and rights of set-off arising from the original contract, or any other contract that was part of the same transaction, of which the debtor could avail itself if such claim were made by the assignor.

2. The debtor may raise against the assignee any other right of set-off, provided that it was available to the debtor at the time notification of the assignment was received.

3. Notwithstanding paragraphs 1 and 2 of this article, defences and rights of set-off that the debtor may raise pursuant to article 11 against the assignor for breach of agreements limiting in any way the assignor's right to assign its receivables are not available to the debtor against the assignee.

Article 21
Agreement not to raise defences or rights of set-off

1. Without prejudice to the law governing the protection of the debtor in transactions made for personal, family or household purposes in the State in which the debtor is located, the debtor may agree with the assignor in a writing signed by the debtor not to raise against the assignee the defences and rights of set-off that it could raise pursuant to article 20. Such an agreement precludes the debtor from raising against the assignee those defences and rights of set-off.

2. The debtor may not exclude:

(a) Defences arising from fraudulent acts on the part of the assignee; or

(b) Defences based on the debtor's incapacity.

3. Such an agreement may be modified only by an agreement in a writing signed by the debtor. The effect of such a modification as against the assignee is determined by article 22, paragraph 2.

Article 22
Modification of the original contract

1. An agreement concluded before notification of the assignment between the assignor and the debtor that affects the assignee's rights is effective as against the assignee and the assignee acquires corresponding rights.

2. After notification of the assignment, an agreement between the assignor and the debtor that affects the assignee's rights is ineffective as against the assignee unless:

(a) The assignee consents to it; or

(b) The receivable is not fully earned by performance and either the modification is provided for in the original contract or, in the context of the original contract, a reasonable assignee would consent to the modification.

3. Paragraphs 1 and 2 of this article do not affect any right of the assignor or the assignee for breach of an agreement between them.

Article 23
Recovery of payments

Without prejudice to the law governing the protection of the debtor in transactions made for personal, family or household purposes in the State in which the debtor is located, failure of the assignor to perform the original contract does not entitle the debtor to recover from the assignee a sum paid by the debtor to the assignor or the assignee.

Section III
Other parties

Article 24
Law applicable to competing rights

1. With the exception of matters that are settled elsewhere in this Convention and subject to articles 25 and 26:

(a) With respect to the right of a competing claimant, the law of the State in which the assignor is located governs:

(i) The characteristics and priority of the right of an assignee in the assigned receivable; and

(ii) The characteristics and priority of the right of the assignee in proceeds that are receivables whose assignment is governed by this Convention[;

(b) With respect to the right of a competing claimant, the characteristics and priority of the right of the assignee in proceeds described below are governed by:

(i) In the case of money or negotiable instruments not held in a bank account or through a securities intermediary, the law of the State in which such money or instruments are located;

(ii) In the case of investment securities held through a securities intermediary, the law of the State in which the securities intermediary is located;

(iii) In the case of bank deposits, the law of the State in which the bank is located[; and

(iv) In the case of receivables whose assignment is governed by this Convention, the law of the State in which the assignor is located]].

[(c) The existence and characteristics of the right of a competing claimant in proceeds described in paragraph 1 (b) of this article are governed by the law indicated in that paragraph]].

2. For the purposes of this article and article 31, the characteristics of a right are:

(a) Whether it is a personal or property right; and

(b) Whether or not it is security for indebtedness or other obligation.

Article 25
Public policy and preferential rights

1. The application of a provision of the law of the State in which the assignor is located may be refused by a court or other competent authority only if that provision is manifestly contrary to the public policy of the forum State.

2. In an insolvency proceeding commenced in a State other than the State in which the assignor is located, any preferential right that arises, by operation of law, under the law of the forum State and is given priority status over the rights of an assignee in insolvency proceedings under the law of that State may be given priority notwithstanding article 24. A State may deposit at any time a declaration identifying any such preferential right.

Article 26
Special proceeds rules

1. If proceeds are received by the assignee, the assignee is entitled to retain those proceeds to the extent that the assignee's right in the assigned receivable had priority over the right of a competing claimant in the assigned receivable.

2. If proceeds are received by the assignor, the right of the assignee in those proceeds has priority over the right of a competing claimant in those proceeds to the same extent as the assignee's right had priority over the right in the assigned receivable of those claimants if:

(a) The assignor has received the proceeds under instructions from the assignee to hold the proceeds for the benefit of the assignee; and

(b) The proceeds are held by the assignor for the benefit of the assignee separately and are reasonably identifiable from the assets of the assignor, such as in the case of a separate deposit account containing only cash receipts from receivables assigned to the assignee.

Article 27
Subordination

An assignee entitled to priority may at any time subordinate its priority unilaterally or by agreement in favour of any existing or future assignees.

Chapter V
Autonomous conflict-of-laws rules

Article 28
Application of chapter V

The provisions of this chapter apply to matters that are:

(a) Within the scope of this Convention as provided in article 1, paragraph 4; and

(b) Otherwise within the scope of this Convention but not settled elsewhere in it.

Article 29
Law applicable to the mutual rights and obligations of the assignor and the assignee

1. The mutual rights and obligations of the assignor and the assignee arising from their agreement are governed by the law chosen by them.

2. In the absence of a choice of law by the assignor and the assignee, their mutual rights and obligations arising from their agreement are governed by the law of the State with which the contract of assignment is most closely connected.

Article 30
Law applicable to the rights and obligations of the assignee and the debtor

The law governing the original contract determines the effectiveness of contractual limitations on assignment as between the assignee and the debtor, the relationship between the assignee and the debtor, the conditions under which the assignment can be invoked against the debtor and any question whether the debtor's obligations have been discharged.

Article 31
Law applicable to competing rights of other parties

1. With the exception of matters that are settled elsewhere in this Convention and subject to articles 25 and 26:

(a) With respect to the right of a competing claimant, the law of the State in which the assignor is located governs:

(i) The characteristics and priority of the right of an assignee in the assigned receivable; and

(ii) The characteristics and priority of the right of the assignee in proceeds that are receivables whose assignment is governed by this Convention[;

b) With respect to the right of a competing claimant, the characteristics and priority of the right of the assignee in proceeds described below are governed by:

(i) In the case of money or negotiable instruments not held in a bank account or through a securities intermediary, the law of the State in which such money or instruments are located;

(ii) In the case of investment securities held through a securities intermediary, the law of the State in which the securities intermediary is located;

(iii) In the case of bank deposits, the law of the State in which the bank is located][; and

(iv) In the case of receivables whose assignment is governed by this Convention, the law of the State in which the assignor is located][.

[(c) The existence and characteristics of the right of a competing claimant in proceeds described in paragraph 1 (b) of this article are governed by the law indicated in that paragraph][].

2. In an insolvency proceeding commenced in a State other than the State in which the assignor is located, any preferential right that arises, by operation of law, under

the law of the forum State and is given priority status over the rights of an assignee in insolvency proceedings under the law of that State may be given priority notwithstanding paragraph 1 of this article.

Article 32
Mandatory rules

1. Nothing in articles 29 and 30 restricts the application of the rules of the law of the forum State in a situation where they are mandatory, irrespective of the law otherwise applicable.

2. Nothing in articles 29 and 30 restricts the application of the mandatory rules of the law of another State with which the matters settled in those articles have a close connection if and in so far as, under the law of that other State, those rules must be applied irrespective of the law otherwise applicable.

Article 33
Public policy

With regard to matters settled in this chapter, the application of a provision of the law specified in this chapter may be refused by a court or other competent authority only if that provision is manifestly contrary to the public policy of the forum State.

Chapter VI
Final provisions

Article 34
Depositary

The Secretary-General of the United Nations is the depositary of this Convention.

Article 35
Signature, ratification, acceptance, approval, accession

1. This Convention is open for signature by all States at the Headquarters of the United Nations in New York, until [...].

2. This Convention is subject to ratification, acceptance or approval by the signatory States.

3. This Convention is open to accession by all States that are not signatory States as from the date it is open for signature.

4. Instruments of ratification, acceptance, approval and accession are to be deposited with the Secretary-General of the United Nations.

Article 36
Application to territorial units

1. If a State has two or more territorial units in which different systems of law are applicable in relation to the matters dealt with in this Convention, it may, at any time, declare that this Convention is to extend to all its territorial units or only one or more of them, and may at any time substitute another declaration for its earlier declaration.

2. Such declarations are to state expressly the territorial units to which this Convention extends.

3. If, by virtue of a declaration under this article, this Convention does not extend to all territorial units of a State and the assignor or the debtor is located in a territorial unit to which this Convention does not extend, this location is considered not to be in a Contracting State.

4. If a State makes no declaration under paragraph 1 of this article, the Convention is to extend to all territorial units of that State.

[*Article 37*
Applicable law in territorial units

If a State has two or more territorial units whose law may govern a matter referred to in chapters IV and V of this Convention, a reference in those chapters to the law of a State in which a person or property is located means the law applicable in the territorial unit in which the person or property is located, including rules that render applicable the law of another territorial unit of that State. Such a State may specify by declaration at any time how it will implement this article.]

Article 38
Conflicts with other international agreements

1. This Convention does not prevail over any international agreement that has already been or may be entered into and that contains provisions concerning the matters governed by this Convention, provided that the assignor is located at the time of the conclusion of the contract of assignment in a State party to such agreement or, with respect to the provisions of this Convention that deal with the rights and obligations of the debtor, at the time of the conclusion of the original contract, the debtor is located in a State party to such agreement or the law governing the original contract is the law of a State party to such agreement.

2. Notwithstanding paragraph 1 of this article, this Convention prevails over the Unidroit Convention on International Factoring ("the Ottawa Convention"). If, at the time of the conclusion of the original contract, the debtor is located in a State party to the Ottawa Convention or the law governing the original contract is the law of a State party to the Ottawa Convention and that State is not a party to this Convention, nothing in this Convention precludes the application of the Ottawa Convention with respect to the rights and obligations of the debtor.

Article 39
Declaration on application of chapter V

A State may declare at any time that it will not be bound by chapter V.

Article 40
Limitations relating to Governments and other public entities

A State may declare at any time that it will not be bound or the extent to which it will not be bound by articles 11 and 12 if the debtor or any person granting a personal or property right securing payment of the assigned receivable is located in that State at the time of the conclusion of the original contract and is a Government, central or local, any subdivision thereof, or an entity constituted for a public purpose. If a State has made such a declaration, articles 11 and 12 do not affect the rights and obligations of that debtor or

person. A State may list in a declaration the types of entity that are the subject of a declaration.

[*Article 41*
Other exclusions

1. A State may declare at any time that it will not apply this Convention to types of assignment or to the assignment of categories of receivables listed in a declaration. In such a case, this Convention does not apply to such types of assignment or to the assignment of such categories of receivables if the assignor is located at the time of the conclusion of the contract of assignment in such a State or, with respect to the provisions of this Convention that deal with the rights and obligations of the debtor, at the time of the conclusion of the original contract, the debtor is located in such a State or the law governing the original contract is the law of such a State.

2. After a declaration under paragraph 1 of this article takes effect:

(a) This Convention does not apply to such types of assignment or to the assignment of such categories of receivables if the assignor is located at the time of the conclusion of the contract of assignment in such a State; and

(b) The provisions of this Convention that affect the rights and obligations of the debtor do not apply if, at the time of the conclusion of the original contract, the debtor is located in such a State or the law governing the receivable is the law of such a State.]

Article 42
Application of the annex

1. A State may at any time declare that it will be bound by:

(a) The priority rules set forth in section I of the annex and will participate in the international registration system established pursuant to section II of the annex;

(b) The priority rules set forth in section I of the annex and will effectuate such rules by use of a registration system that fulfils the purposes of such rules, in which case, for the purposes of section I of the annex, registration pursuant to such a system has the same effect as registration pursuant to section II of the annex;

(c) The priority rules set forth in section III of the annex;

(d) The priority rules set forth in section IV of the annex; or

(e) The priority rules set forth in articles 7 and 8 of the annex.

2. For the purposes of article 24:

(a) The law of a State that has made a declaration pursuant to paragraph 1 (a) or (b) of this article is the set of rules set forth in section I of the annex;

(b) The law of a State that has made a declaration pursuant to paragraph 1 (c) of this article is the set of rules set forth in section III of the annex;

(c) The law of a State that has made a declaration pursuant to paragraph 1 (d) of this article is the set of rules set forth in section IV of the annex; and

(d) The law of a State that has made a declaration pursuant to paragraph 1 (e) of

this article is the set of rules set forth in articles 7 and 8 of the annex.

3. A State that has made a declaration pursuant to paragraph 1 of this article may establish rules pursuant to which assignments made before the declaration takes effect become subject to those rules within a reasonable time.

4. A State that has not made a declaration pursuant to paragraph 1 of this article may, in accordance with priority rules in force in that State, utilize the registration system established pursuant to section II of the annex.

5. At the time a State makes a declaration pursuant to paragraph 1 of this article or thereafter, it may declare that it will not apply the priority rules chosen under paragraph 1 of this article to certain types of assignment or to the assignment of certain categories of receivables.

Article 43
Effect of declaration

1. Declarations made under articles 36, paragraph 1, 37 or 39 to 42 at the time of signature are subject to confirmation upon ratification, acceptance or approval.

2. Declarations and confirmations of declarations are to be in writing and to be formally notified to the depositary.

3. A declaration takes effect simultaneously with the entry into force of this Convention in respect of the State concerned. However, a declaration of which the depositary receives formal notification after such entry into force takes effect on the first day of the month following the expiration of six months after the date of its receipt by the depositary.

4. A State that makes a declaration under articles 36, paragraph 1, 37 or 39 to 42 may withdraw it at any time by a formal notification in writing addressed to the depositary. Such withdrawal takes effect on the first day of the month following the expiration of six months after the date of the receipt of the notification by the depositary.

5. In the case of a declaration under articles 36, paragraph 1, 37 or 39 to 42 that takes effect after the entry into force of this Convention in respect of the State concerned or in the case of a withdrawal of any such declaration, the effect of which in either case is to cause a rule in this Convention, including any annex, to become applicable:

(a) Except as provided in paragraph 5 (b) of this article, that rule is applicable only to assignments for which the contract of assignment is concluded on or after the date when the declaration or withdrawal takes effect in respect of the Contracting State referred to in article 1, paragraph 1 (a);

(b) A rule that deals with the rights and obligations of the debtor applies only in respect of original contracts concluded on or after the date when the declaration or withdrawal takes effect in respect of the Contracting State referred to in article 1, paragraph 3.

6. In the case of a declaration under articles 36, paragraph 1, 37 or 39 to 42 that takes effect after the entry into force of this Convention in respect of the State concerned or in the case of a withdrawal of any such declaration, the effect of which in either case is to cause a rule in this Convention, including any annex, to become inapplicable:

(a) Except as provided in paragraph 6 (b) of this article, that rule is inapplicable to assignments for which the contract of assignment is concluded on or after the date when the declaration or withdrawal takes effect in respect of the Contracting State referred to in article 1, paragraph 1 (a);

(b) A rule that deals with the rights and obligations of the debtor is inapplicable in respect of original contracts concluded on or after the date when the declaration or withdrawal takes effect in respect of the Contracting State referred to in article 1, paragraph 3.

7. If a rule rendered applicable or inapplicable as a result of a declaration or withdrawal referred to in paragraph 5 or 6 of this article is relevant to the determination of priority with respect to a receivable for which the contract of assignment is concluded before such declaration or withdrawal takes effect or with respect to its proceeds, the right of the assignee has priority over the right of a competing claimant to the extent that, under the law that would determine priority before such declaration or withdrawal takes effect, the right of the assignee would have priority.

Article 44
Reservations

No reservations are permitted except those expressly authorized in this Convention.

Article 45
Entry into force

1. This Convention enters into force on the first day of the month following the expiration of six months from the date of deposit of the fifth instrument of ratification, acceptance, approval or accession with the depositary.

2. For each State that becomes a Contracting State to this Convention after the date of deposit of the fifth instrument of ratification, acceptance, approval or accession, this Convention enters into force on the first day of the month following the expiration of six months after the date of deposit of the appropriate instrument on behalf of that State.

3. This Convention applies only to assignments if the contract of assignment is concluded on or after the date when this Convention enters into force in respect of the Contracting State referred to in article 1, paragraph 1 (a), provided that the provisions of this Convention that deal with the rights and obligations of the debtor apply only to assignments of receivables arising from original contracts concluded on or after the date when this Convention enters into force in respect of the Contracting State referred to in article 1, paragraph 3.

4. If a receivable is assigned pursuant to a contract of assignment concluded before the date when this Convention enters into force in respect of the Contracting State referred to in article 1, paragraph 1 (a), the right of the assignee has priority over the right of a competing claimant with respect to the receivable and its proceeds to the extent that, under the law that would determine priority in the absence of this Convention, the right of the assignee would have priority.

Article 46
Denunciation

1. A Contracting State may denounce this Convention at any time by written notification addressed to the depositary.

2. The denunciation takes effect on the first day of the month following the expiration of one year after the notification is received by the depositary. Where a longer period is specified in the notification, the denunciation takes effect upon the expiration of such longer period after the notification is received by the depositary.

3. This Convention remains applicable to assignments if the contract of assignment is concluded before the date when the denunciation takes effect in respect of the Contracting State referred to in article 1, paragraph 1 (a), provided that the provisions of this Convention that deal with the rights and obligations of the debtor remain applicable only to assignments of receivables arising from original contracts concluded before the date when the denunciation takes effect in respect of the Contracting State referred to in article 1, paragraph 3.

4. If a receivable is assigned pursuant to a contract of assignment concluded before the date when the denunciation takes effect in respect of the Contracting State referred to in article 1, paragraph 1 (a), the right of the assignee has priority over the right of a competing claimant with respect to the receivable and its proceeds to the extent that, under the law that would determine priority under this Convention, the right of the assignee would have priority.

Article 47
Revision and amendment

1. At the request of not less than one third of the Contracting States to this Convention, the depositary shall convene a conference of the Contracting States for revising or amending it.

2. Any instrument of ratification, acceptance, approval or accession deposited after the entry into force of an amendment to this Convention is deemed to apply to the Convention as amended.

Annex to the draft convention

Section I
Priority rules based on registration

Article 1
Priority among several assignees

As between assignees of the same receivable from the same assignor, the priority of the right of an assignee in the assigned receivable and its proceeds is determined by the order in which data about the assignment are registered under section II of this annex, regardless of the time of transfer of the receivable. If no such data are registered, priority is determined by the order of the conclusion of the respective contracts of assignment.

Article 2
Priority between the assignee and the insolvency administrator or creditors of the assignor

The right of an assignee in an assigned receivable and its proceeds has priority over the right of an insolvency administrator and creditors who obtain a right in the assigned receivable or its proceeds by attachment, judicial act or similar act of a competent authority that gives rise to such right, if the receivable was assigned, and data about the assignment were registered under section II of this annex, before the commencement of such insolvency proceeding, attachment, judicial act or similar act.

Section II
Registration

Article 3
Establishment of a registration system

A registration system will be established for the registration of data about assignments, even if the relevant assignment or receivable is not international, pursuant to the regulations to be promulgated by the registrar and the supervising authority. Regulations promulgated by the registrar and the supervising authority under this annex shall be consistent with this annex. The regulations will prescribe in detail the manner in which the registration system will operate, as well as the procedure for resolving disputes relating to that operation.

Article 4
Registration

1. Any person may register data with regard to an assignment at the registry in accordance with this annex and the regulations. As provided in the regulations, the data registered shall be the identification of the assignor and the assignee and a brief description of the assigned receivables.

2. A single registration may cover one or more assignments by the assignor to the assignee of one or more existing or future receivables, irrespective of whether the receivables exist at the time of registration.

3. A registration may be made in advance of the assignment to which it relates.

The regulations will establish the procedure for the cancellation of a registration in the event that the assignment is not made.

4. Registration or its amendment is effective from the time when the data set forth in paragraph 1 of this article are available to searchers. The registering party may specify, from options set forth in the regulations, a period of effectiveness for the registration. In the absence of such a specification, a registration is effective for a period of five years.

5. Regulations will specify the manner in which registration may be renewed, amended or cancelled and regulate such other matters as are necessary for the operation of the registration system.

6. Any defect, irregularity, omission or error with regard to the identification of the assignor that would result in data registered not being found upon a search based on a proper identification of the assignor renders the registration ineffective.

Article 5
Registry searches

1. Any person may search the records of the registry according to identification of the assignor, as set forth in the regulations, and obtain a search result in writing.

2. A search result in writing that purports to be issued by the registry is admissible as evidence and is, in the absence of evidence to the contrary, proof of the registration of the data to which the search relates, including the date and hour of registration.

Section III
Priority rules based on the time of the contract of assignment

Article 6
Priority among several assignees

As between assignees of the same receivable from the same assignor, the priority of the right of an assignee in the assigned receivable and its proceeds is determined by the order of the conclusion of the contract of assignment.

Article 7
Priority between the assignee and the insolvency administrator or creditors of the assignor

The right of an assignee in an assigned receivable and its proceeds has priority over the right of an insolvency administrator and creditors who obtain a right in the assigned receivable or its proceeds by attachment, judicial act or similar act of a competent authority that gives rise to such right, if the receivable was assigned before the commencement of such insolvency proceeding, attachment, judicial act or similar act.

Section IV
Priority rules based on the time of notification of assignment

Article 8
Priority among several assignees

As between assignees of the same receivable from the same assignor, the priority of the right of an assignee in the assigned receivable and its proceeds is determined by the order in which notification of the assignment is effected.

Article 9
Priority between the assignee and the insolvency administrator or creditors of the assignor

The right of an assignee in an assigned receivable and its proceeds has priority over the right of an insolvency administrator and creditors who obtain a right in the assigned receivable or its proceeds by attachment, judicial act or similar act of a competent authority that gives rise to such right, if the receivable was assigned and notification was effected before the commencement of such insolvency proceeding, attachment, judicial act or similar act.

Annex II

Renumbering of articles of the draft convention

Current article number[13]	Former article number[14]
1	1
2	2
3	3
4	4
5	5
6	6
7	7
8	8
9	9
10	10
11	11
12	12
13	13
14	14
15	15
16	16
17	17
18	18
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21	21
22	22
23	23
24	24
25	25
26	26
27	27
28	New
29	28
30	29
31	30
32	31
33	32
34	33
35	34
36	35
37	New
38	36
39	37
40	38
41	39
42	40

13 Annex I to the present document.

14 Draft articles 1 through 17 are taken from document A/55/17, Annex I. Draft article 18 to 44 of the draft convention and 1 to 7 of the annex are taken from document A/CN.9/466, Annex I.

43	41
44	42
45	43
46	44
47	New

Annex to the draft convention

1	1
2	2
3	3
4	4
5	5
6	6
7	7
8	New
9	New

* * *